VOLUME 1

# RIGHT TO FOOD

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# Right to Food

- COMMISSIONERS REPORTS
- SUPREME COURT ORDERS
- NHRC REPORTS
- ARTICLES




**EDITORS**

Colin Gonsalves
Vinay Naidoo
P. Ramesh Kumar
Aparna Bhat



**HUMAN RIGHTS LAW NETWORK**

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To protect fundamental human rights, increase access to basic resources for marginalized communities and eliminate discrimination.

To create a justice delivery system that is accessible, efficient, accountable, affordable and works for the poor. To raise the level of pro bono legal expertise for the poor to make the work uniformly competent as well as compassionate.

To equip, through professional training, a new generation of young public interest lawyers and paralegals who are comfortable both in the world of law as well as in social movements, and who learn from the social movements to refine legal concepts and strategies.

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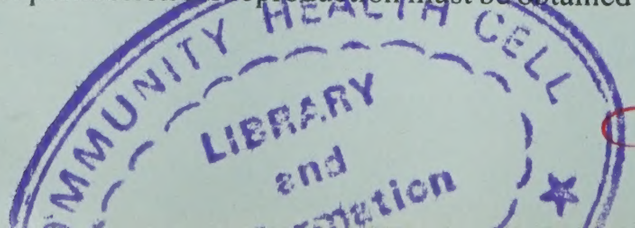
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# INTRODUCTION

## FIRST WORDS

We were in Jaipur for a meeting organised by Kavita Shrivastav of the People's Union for Civil Liberties (PUCL) unconnected with starvation deaths, where we met Jean Dreze, a professor of economics in Delhi. He suggested that we go with him to a village nearby to see the extent of hunger in the countryside. An hour's drive from Jaipur and we were in another world – that of the dispossessed. People had no food at all and fluoride in the well-water had prematurely aged the young people.

*Mere miles away* were the godowns of the Food Corporation of India (FCI) – full of grain, some of it rotting and a feast for rats.

This is the spectre of starving India.

In December 2000, the Union Minister for Consumer Affairs and Public Distribution wrote to all chief ministers admitting that five crore people are victims of starvation. A few days later, the Chief Minister of Rajasthan complained to him that he had heard that lakh of tonnes of food grains were sitting in the godowns of the Corporation and that there was a proposal to dump it in the sea. To make storage space for the next crop. When Manoj Parida, Senior Regional Manager of the Food Corporation of India, was interviewed on the Star TV news channel, he said that he could only give the grain to the states if the central government allocated it, and that his dilemma was that he couldn't just throw it away!

In 1988, in the case of Pradeep Kishen, when starvation deaths were brought to the notice of the Apex Court, the court accepted the assurances of the Government of Orissa that the situation would be looked into, and hoped that starvation deaths would cease. Ten years later, another petition was filed, detailing hundreds of starvation deaths. In 2001, when Kavita Srivastava of the PUCL (Rajasthan) filed a petition, the condition of the people had not changed.

## NO WILL TO ACT

Why is it that with 60 million tonnes of grain *over-and-above the 'emergency' buffer stocks*, India still has hunger on this scale? Why are half of India's children malnourished? No answer. Shanta Kumar,

the minister responsible, remains unruffled despite widespread condemnation. And the Prime Minister appeared on television recently to say that the reports of starvation deaths are false and politically motivated.

All this in a situation where it has been calculated that it is cheaper to give this grain away free to the poor than to transport and store it! A compassionate court would have none of that. It was found to be incomprehensible that a litigant would have to move the highest court merely for a direction to government to implement its own schemes.

"Cut the flab somewhere else", said the Court when confronted with the argument that the states had no funds to feed hungry children. From the Ratlam Municipality case onwards, the Apex Court has held that when it comes to the enforcement of a fundamental right, courts will not entertain the argument of financial incapacity.

Hunger spreads not because the State lacks the funds to act but it chooses to use its money elsewhere in what V. R. Krishna Iyer once called "a perverse expenditure logic". A second aircraft carrier for the Navy, to be purchased soon, will cost a thousand crore, an amount that could feed all of this nation's children. But macho muscle flexing is more important than that! And we have examples of ostentation such as the foreign trip of the Vice President of India, Krishna Kant, and his family, at the State's expense.

## SCHEMES IN DISARRAY

As a result of this trend, we are now in a situation worse than the colonial era. Governments do not care that people remain illiterate or in ill health, not even if they die. It just does not matter.

The British evolved a *Famine Code* which ensured that anyone needing food in a famine area had only to turn up at a work site - a road, a school building, a watershed management programme – to get work. At the end of the day, she would get half of her wages in grain. Famine records show that the prompt implementation of food for work programmes reduced hunger and prevented starvation deaths. For those unable to work – the old, infirm and disabled – there was a dole of fifty paise per day.

Fifty years after Independence, this Famine Code is in disuse and the elaborate procedure laid down for tackling famines disregarded. The watered-down remedy – the *Employment Assurance Scheme* (EAS) –

provided for employment for two family members on food for work projects for 100 days in a year. This was never implemented. And recently, the Prime Minister announced from the Red Fort that the scheme was being upgraded and renamed the *Sampoorna Gramin Rozgar Yojana* (SGRY). This 'upgraded' scheme, however, provided work for only ten days in a year!

The *ration card system*, the only mechanism in place to feed the poor, is in disarray. In India's capital, the identification of Below Poverty Line (BPL) families started after the court case and there were many complaints of corruption in the issuing of forms.

The *Mid-Day Meal Scheme* (MDMS), introduced as far back as 1995 and requiring a cooked meal to be given to all children in government and government-assisted schools, was implemented fully only in Tamil Nadu. The Delhi government only gave a few biscuits to its schoolchildren.

The *Annapurna Scheme*, which provides grain to the poorest of the poor at Rs. 2 per kg was also not implemented. The beneficiaries of the national Old Age Pension Scheme usually received their pensions six months late if at all.

No wonder that the Comptroller & Auditor General, in his Year 2000 Report, found significant systematic weaknesses in the fair price shop system. He found the reports of employment generated not genuine. The Employment Assurance Scheme, which promised a hundred days of food for work, in practice provided only nine days of work. Scarce resources were lost in the labyrinth of a slothful administrative system. The report found one-fifth of rural households facing the prospect of hunger. Forty percent of all households did not get two square meals a day. Concluding, the Comptroller & Auditor General found serious flaws in design, execution and monitoring of the schemes.

A study conducted by the Tata Economic Consultancy Services found a large number of bogus ration shops, and 30 per cent of the grain being diverted.

**SUPREME COURT ORDERS**

The court directed that the targeted public distribution system be fully implemented by January 2002 and that all governments complete their identification of Below Poverty Line (BPL) families, issue ration cards and distribute 25 kg of grain per family per month by that date.

A similar order was passed for the *Antyodaya Anna Yojana* (AAY) scheme, under which the poorest of the poor get grain at Rs. 2 per kg. The Supreme Court directed that the governments should consider giving the grain free to people who are too poor to buy it. It directed governments to provide a cooked midday meal in all government and government-assisted schools.

It directed governments to implement the *National Old Age Pension Scheme* (NOAPS) fully by January 2002 and to make payments of pension by the seventh of each month.

Similarly directions were made in respect of the Annapurna Scheme, the Integrated Child Development Scheme (ICDS), the National Maternity Benefit Scheme (NMBS) and the National Family Benefit Scheme (NFBS).

The final order was dated 8.5.02. In this order the gram panchayats have been empowered to frame the Food-for-Work schemes, wherein special emphasis is to be given for the poor, women and dalits. Contractors are prohibited. The gram sabhas are also empowered to conduct a social audit of all the food and employment schemes and to report instances of misuse of funds. On such reports being made, the authorities are required to punish the guilty. The gram sabhas are also empowered to monitor the implementation of the various schemes and to have access to relevant information as to how beneficiaries are selected and how benefits are dispersed. A grievance redressal procedure is set out in this order. Complaints of non-implementation of the Supreme Court's order are to be made to the CEO/Collector and these complaints are to be acknowledged with a receipt. Ultimately it is the Chief Secretary who is made responsible. Dr. N. C. Saxena, former Planning Secretary, and Mr. S. R. Sankaran, former Secretary for Rural Development, have been appointed as Commissioners of the Supreme Court for the purpose of looking into people's grievances. The Supreme Court has also directed government to frame clear guidelines for the proper identification of BPL families as there were complaints that this criteria is neither clear nor uniform. Ration shops have been directed to remain open throughout the month during fixed hours, the details of which should be displayed on notice boards.

**TRANSPARENCY**

Most officials do not even know of the schemes in their own jurisdiction. There is no way for people in a village to know what schemes they are entitled to. The order of the Court in the Rajasthan PUCL case will

hopefully change the situation for the better. A translated copy of the Supreme Court order and the list of the beneficiaries of each scheme are to be displayed on every *gram panchayat* notice board and in schools. Doordarshan and AIR are to publicise the schemes.

When all is said and done, even with the Apex Court order, the level of compliance will go up to, say, 35 per cent. Hunger will remain institutionalised. For as long as priorities do not change, half of India's population will be kept deliberately hungry by State policy. Only a revolution in thinking can change that.

Madhura Swaminathan, in her recent publication "Weakening Welfare", has studied the Public Distribution System (PDS) in India. Noticing that food deprivation and insecurity persists on a mass scale, she concludes that this situation of mass deprivation is likely to worsen in the current context of "liberalisation, structural adjustment and the weakening of welfare systems". She argues that there is a need to expand and strengthen – not undermine or disband – the PDS system. She has identified 'targeting' as a dangerous policy introduced as a mechanism to ultimately close down the PDS. A substantive part of the information in the next part of this introduction is largely taken from her book.

**HISTORY OF THE PUBLIC DISTRIBUTION SYSTEM**

| | |
|---|---|
| 1964: | FCI set up a sole central agency for procurement, storage, transportation and distribution of food commodities viz. rice, wheat, sugar, edible oils, kerosene and coal. |
| 1964-1978: | Drought of 1965/67 and 1972/73 provided strong impetus for the expansion of PDS. |
| 1978-1991 | Food grain distribution through PDS peaked in 1991 at 20.8 MT. |
| 1991 onwards | Food grain distributed through PDS falls substantially to 14 MT in 1994. Stocks accumulate. |
| | Between 1991 and 1994 PDS process doubles. The poor are priced out. Sales drop. Stocks build up. In this period, because global prices are temporarily high, export has taken place at the cost of nutrition in India. |

| | |
|---|---|
| 1997 | Targeting introduced. |
| 1998 to 2001 | Above Poverty Line (APL) prices were increased 85% (wheat) and 61% (rice) and BPL prices by 66% and 62% respectively. |

## THE SPECTRE OF MASS HUNGER

The National Sample Survey data shows that **per capita consumption of cereals declined in every state except Kerala in both urban and rural areas.** A shift is noticed from cereals to other food items of lesser nutrition among the poor. This exacerbates under nourishment.

Nutritional surveys done by the National Nutrition Monitoring Board confirms this inadequacy of food (and cereal) intake by large parts of the population well below the recommended intake of 460 grams. Referring to "hidden hunger" it found an inadequate intake of micronutrients, which play a critical role in body functioning.

The National Sample Survey Organisation found in 17 of India's most populous states that **the average calorie intake declined between 1972 and 1994.** The decline was particularly sharp in rural areas.

At the all-India level, total calories per head in rural areas has fallen to 2149 by 1999-2000 compared to 2211 in 1983, a decline by 72 calories per head. This level of 2149 calories per head in 1999-2000 is substantially lower than China or Brazil's level of 2757 calories and 2797 calories in 1993. It is also lower than Tanzania or Kenya's level of 1980.

A commonly used indicator of under nourishment is the Body Mass Index (BMI). For this ratio of weight (kg) to the square of height (m), 18.5 is normal. Using this indicator, Shetty and James found 46% of persons chronically deficient in 1991-1992. Severe under nourishment was observed among 9%. In other words **one half of the population in the country is malnourished.** Of these **53% of children** were found to be undernourished and **21% severally undernourished.**

## POVERTY LINE EXCLUDES MANY HUNGRY PERSONS

The original standard for the definition of the poor was thrice the food expenditure as it was shown that poor families spend 1/3 of their expenditure on food. Any household that spends more than 1/3 of its income on food is considered poor in the United States and eligible for food stamps. If this standard were used in India, **95% of all households would be considered poor.** If one uses the China standard of a food

share of 60%, then **80% of the rural population and 60% of the urban population would be considered poor.** Thus in India, at most the top 20% of the population can be excluded from systems of food security.

When there is mass hunger the weight attached to every undernourished person who is wrongly excluded should be much higher than the weight attached to a rich person who benefits from the scheme.

The conclusion drawn by Swaminathan is that **the proportion of persons suffering deprivations in food and nutrition is higher than those classified as below the poverty line.** For example 37% of urban household were BPL in 1993-94 while 80% of household were calorie deficit.

If the objective of PDS is food security then it should also look at **those facing the risk** of under nourishment. While anthropometrical measures suggest 50% of adults are undernourished, 70% of households are deficient in food consumption.

Swaminathan concludes: chronic hunger persists on a mass scale in India.

## STRUCTURAL ADJUSTMENT AND THE DECLINE IN PER CAPITA OFFTAKE

There are sharp regional variations in total and per capita offtake. Some of the southern states, Andhra Pradesh, Tamil Nadu, Kerala and Karnataka, accounted for almost one half of the PDS offtake of grain in the country. By contrast the four northern states – Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh – accounted for only 10% in 1995. Kerala was undoubtedly the leader with a fair system of public delivery. The average per capita offtake was 53.3 kg. per year as compared to 2.3 kg. in Bihar and 4.6 in Madhya Pradesh.

The most striking feature of immediate post structural adjustment (1991-1995) was the widespread decline in per capita offtake.

In Uttar Pradesh and Bihar in 1987, 98% of the rural population did not purchase any grain from PDS. In Kerala by contrast, 87% of the population purchased grain from PDS. The data indicated that **PDS was not serving the vast majority of the country's population** and that there was a near total collapse of the PDS system in Bihar and some northern states.

## CORRUPTION AND MALADMINISTRATION

In Thane district in Maharashtra, Swaminathan found that ration cards of scheduled tribes showed full offtake though the tribes had not purchased food from the ration shops. Other research has found bogus ration cards, poor quality grains and short weighing of foods. Researchers have estimated that **only 17% of the wheat lifted from the Food Corporation of India (FCI) by the state governments reaches the final consumer in Bihar!**

Insufficient supply of grains was the most important reason given for not using PDS. 40% did not buy grain because there was none to be brought.

## TARGETS, FOOD STAMPS AND OTHER RACKETS: an international perspective

### MEXICO

Changes began in the 80's when food subsidies were cut by 80%. In April 1986 a targeted food stamps programme was started where stamps could be exchanged for food. Targeting was done in three ways. First there was an income criterion where only those with an income less than twice the minimum wage were eligible. Then there was geographical targeting of low-income neighbourhoods. Thirdly there was self-targeting as households had to go to a particular place to register. Targeting led to a fall in the number of households receiving subsidised food. **The decline was 80% between 1983 and 1987**. Secondly the market price of food rose sharply. **In 1982 the basic food basket was 30% the minimum wage; it rose to 125% in 1990**.

### SRI LANKA

For more than 30 years Sri Lanka had an effective universal system of heavily subsidised food rationing. The individual entitlement was 7.2 Kg of rice per month. In 1972 a distinction was made between persons paying income tax and those not paying. In 1977, encouraged by the IMF, it was decided to cut food subsidies. The International Monetary Fund (IMF) wanted food subsidies to go completely whereas government wanted to maintain the food subsidy for the bottom 40% of the population. In 1978 targeting was introduced with an income qualification. In 1979 there was a shift to the targeted food stamp programme. As a result **there was a fall of 50% in the participating households.** A significant proportion of low-income groups were excluded from the food stamp programme. Then the value of food stamps declined as inflation increased causing the food subsidy to decrease. The prices of

food commodities rose sharply. In the evaluation of the scheme the Ministry of Plan Implementation found more families put at risk nutritionally, a decline in per capita calorie intake of the poor and increase in the proportion of children suffering from acute malnutrition.

ZAMBIA

In January 1989, food coupons were introduced, and in July targeting on the basis of income began. Many poor households were excluded and food security worsened.

JAMAICA

Until 1984, there was a system of generalised price subsidies. In 1984 these were eliminated and replaced by food stamps and a school-feeding programme. There were two target groups. The first category included pregnant or lactating women, children under 5, the elderly, poor and the disabled. The second category included those below a particular income level. This standard was lower than the cut-off used by the Statistical Institute of Jamaica to identify the lowest income group.

As a result **government spending on food subsidies fell dramatically.** While 1% of GNP was spent on food subsidies in 1972, spending on food stamps in 1994 was only 0.23%. Spending in 1994 was only 57% of the 1991 level in real terms. Secondly, the real value of stamps fell by 17%. Thirdly, high inflation led to a steep rise in the cost of the minimum food basket. **In October 1984 for example the cost of the minimum food basket was three times the minimum wage.** Fourthly, the number of participants was restricted. Fifthly, many of the poor were excluded because their identification was based on crude surveys with no attempts to verify reported income except through observing "quality of housing and consumer goods" during a brief home visit. There was no system of continuous verification or registration. Participants had to collect the stamps on certain days of the mouth. As a result of all this it was found in 1988 that 53% of households in the **poorest quintile were not receiving food stamps. 63% of households with pregnant or lactating women were excluded. 50% of the household with malnourished children were denied benefits. In the poorest quintile of households with elderly persons, 45% were excluded from food stamps.** This situation worsened in the 80's.

TUNISIA

In December 1993, a doubling of the prices of cereals was announced. There were widespread and spontaneous "bread riots". The President

rescinded the price increases. In the early 1990's as part of a structural adjustment loan, targeting was introduced. The extensive and successful system prevailing in Tunisia since the 1970's came under attack. Expenditures on food subsidies fell. In 1993 food subsidies accounted for 2% of GDP as compared to 4% a decade earlier. **Between 1990 and 1993 there was a 14% fall in caloric intake and a 16% fall in protein intake.**

COLUMBIA
A study done by Pinstrup and Anderson in 1993 found the food subsidy programme **targeted out of existence**...

**INDIA: Sabotaging the Public Distribution System**
In recent times advisors to the Government of India and the World Bank (WB) have suggested a shift from PDS to a system of food stamps or coupons. Such advice generally ignores not only the experience of other countries but also the inherent difficulties in implementing such a system, Swaminathan points out that a food stamp system entails extensive book keeping, revalidating of coupons and the possibility of fraud by the counterfeiting of coupons.

Two major moves were made by the Government of India to sabotage the PDS system—in all probability with the nudging of the World Bank and the International Monetary Fund. The first came in 1992 with the 'Revamped PDS' (RPDS) and the second in 1997 with the 'Targeted PDS' (TPDS). This come together with another major policy shift in the 1990's, away from the agricultural strategy of self- sufficiency in food grains production.

One way of weakening the PDS in the early 1990's was by repeatedly raising the price in the PDS shops. These prices were increased to such an extent that the cumulative price increase of food grains in the PDS shops was higher that the rise in the general price index. Coupled with this, government sharply reduced the supply of food grain to the PDS since 1991. Thus from 1991-1998 there was a fall in per capita offtake.

Revamped PDS involved targeting specific areas such as drought-prone, desert, tribal, hilly and urban slum areas. Targeted PDS used the poverty line to demarcate the poor and the non-poor. This system was so arbitrary and irrational that it resulted in large numbers of poor persons being excluded. There was no method at all to determine whether the family fell below the poverty line. The income criterion was not fol-

lowed in most states and particularly in the rural areas, as following the stated income criterion would result in 90% of households falling below the poverty line. Reports from many rural areas indicated households were classified as falling below the poverty line on the basis of visual inspection as to whether the household had a titled roof or a mud floor. In many tribal areas poor families were excluded if they stated that they ate meat!

Swaminathan's study of the revamped and targeted PDS found that entitlements were lower in the revamped PDS areas than under general PDS. She found that retail prices in PDS shops in Maharashtra were the highest in the country and rising faster than at the national level. As a result **quantities of grain sold were falling since 1991**. Targeting had replaced the per capita norm by the family norm. Using the poverty line resulted in misidentification of households and mis-targeting.

Moghe, in his study of Maharashtra, found that when targeted PDS was announced there were **60 lakhs households**, according to the central government, eligible for BPL category. The state restricted this number to **43 lakhs.**

In slums, households were classified as BPL or A ('above') PL on the basis of a few enquiries resulting in **absurdly low numbers.** In Dhavari, Asia's largest slum with a population of 0.5 million, the Rationing Control Officer identified only 365 PBL families in 1997 and after 're-checks' the number fell to 151 in 1999!

The World Bank has recommended that PDS be targeted to the "very poor" and that a distinction be drawn between the "very poor" and the "moderately poor" to improve transfer of food to the "ultra poor". The very poor are defined as households that have expenditure less than 3/4 the BPL expenditures. The remaining 1/4 are defined as moderately poor. In short an extremely narrow form of targeting is being propagated to groups within the poor. This, Swaminathan concludes, is most undesirable. What we need is a system of near universal provision. At most the top 20% of the population can be excluded.

When there is mass hunger, the weight attended to every undernourished person who is wrongly excluded should be much higher than the weight attended to a rich person who benefits from a scheme.

When there is targeting, especially with a low-income cut-off, errors in measurements can mean disqualification for genuinely poor person.

Secondly there is an incentive to cheat. Thirdly time specific cut-offs makes little sense when there is downward income mobility. Gaiha, in his 1987 study, found that 13% of the non-poor is 1968 had become poor in 1970.

## GLOBALISATION AND THE PLANNED DESTRUCTION OF INDIA'S AGRICULTURAL PRODUCTION

Utsa Patnaik has written on this issue. In this part of the article we rely on her inputs (her full article is reprinted in the articles section of this book).

**Food grain output dropped sharply** to 1.66% (1999-2000) compared to 3.54% for the previous decade. There was a decline of 8 million ha in the area sown as food grains. The sharp cut back in government rural development expenditures reduced growth in rural employment to only 0.6% (1993-1999) as compared to 2% (1987-1993).

Surplus production of a few 'advanced countries' accounts for 4/5 of the global trade in cereals. These countries have focussed their attention on the markets of the 'developing world'. To penetrate these economics and attack their agricultural production systems, the advanced countries ensured that their export of grain would be at very low prices so as to make local prices appear exorbitant. One of the ways in which the prices were kept artificially low was by the grant of large subsidies to the farming sector including grants to agro-business corporations.

During 1980 to 1986, for example, cereal prices fell by one ¼, the US increased the Producer Subsidy Equivalent (PSE) as a percentage of the total value of agricultural output from 9% to an astronomical 45%, and European countries followed suit. Ten European countries raised the PSE to agricultural output percentage from 25 to 66 while Japan raised it from 71 to 93. These highly inflated mid-80's subsidy levels were then deliberately made the base from which a mere one fifth cut was undertaken by advanced countries in the Agreement on Agricultural of GATT in 1994.

There is another indicator of farm subsidies. It is called the "Total Support Estimate" (TSE). This is the figure of total support to farmers. The USA which had reduced its TSE to 34% of it value of agricultural production by 1997, raised it by 51% in 1991 and then hugely in 2002 thus transferring between 71 to 96 billion dollars between 1997 and 1999 to the farm sector. There is a farm bill before the US Congress proposing to pay additional subsidies of 73.5 billion over the next 10 years.

Similarly the 24 OECD countries including Japan increased their TSE from 46.5% in 1997 to 59.4% by 1999.

As a result, the global prices of major staples like rice, wheat and maize have been halved and developing countries where protection has been removed have become vulnerable.

The proponents of globalisation thus have double standards. While massively subsiding their farm sectors, including massive agro-corporations, the argument is simultaneously made in the developing world for subsidies to be removed! Advanced countries have, through incessant pressure applied via the WTO, succeeded in getting quantitative restrictions removed - fully years before the mandatory date. They are now pushing for the winding up of the PDS. Thus opening up to free trade in agriculture is taking place at the worst possible time when global food prices have been crashing.

After grain inputs for Eastern Europe and CIS countries declined sharply in the early 1990's, the USA turned its attention to penetrating South East Asian countries using the familiar rhetoric that all subsidies were bad. The Philippines, for example, gave up its functioning grain procurement and distribution system and became a net importer of US grain.

**SUICIDES**

In India, liberalised trade policies, have resulted in massive losses for farmers. Farmers in Andhra Pradesh, Maharashtra, Karnataka and other states have been devastated. Many have committed suicide. Cotton farmers have been killing themselves since 1998. In the first month of 2002, above 25 new cases of suicide were reported from Andhra Pradesh. Many have resorted to selling body parts such as kidneys. Recovery proceedings have resulted in the taking away of land, houses, farming tools and equipment and even household articles including utensils!

**LOW FOOD SUBSIDY: NOT A BURDEN**

Swaminathan has demolished the myth that the 'burden' of food subsidies is too high pointing out that food subsidy as a percentage of GDP has remained unchanged over the last 31 years at 0.31% of GDP. This compares favourably with Sri Lanka (1.3% in 1984), Mexico (0.63% in 1984) and Tunisia (2% in 1993).

**KERALA LEADS THE WAY**

According to Swaminathan, the Kerala experience shows that with political commitment food security can be obtained. The establishment of

an effective PDS system in Kerala was the outcome of a strong people's movement for food. As a result the coverage is almost universal. In 1996, 95% of households were covered. The poor depend on and use PDS more than the rich. The functioning and delivery system is far better than other states.

**RUTHLESSNESS**

Returning to the petition in the Supreme Court. The Government responded to the Orders of the Supreme Court with stealth, guile and ruthlessness. While compromising on minor issues, the government set about sabotaging the already fragile system of food security in the country.

First, it dealt with the excess food stocks not by using them for appeasing hunger in food-for-work schemes, but by exporting the grain. In the two years between 2000 and 2002, the Government of India exported 20 million tonnes of grain to Eastern European countries, much of it for cattle feed, at prices below the BPL price.

Second, it proposed a slashing of the BPL list and attempted to remove millions of BPL families from the list. The principal justification for this were articles of dubious merit claiming that poverty in India had declined from 37% of the population to 27%. Utsa Patnaik, Professor at Jawaharlal Nehru University made a stinging response basing her calculation of poverty on the calorie intakes and demonstrated that if the BPL cut-off line (fixed in 1979 at an intake of 2400 calories per person per day) were used today, 80% of the population should be at or below the poverty line. Even if the cut-off was taken at 1800 calories, 40% of the population should fall below the poverty line.

Third, while exporting grain, the Government of India is poised to import genetically modified grain, thus capitulating to the grain transnationals, giving them not just a toe-hold, but allowing them a stranglehold of the Indian grain market (reportedly one of the largest in the world). Unfortunately there are some individuals and NGOs supporting this move.

This book is therefore coming out at a very critical juncture of the struggle for the Right to Food.

Kavita Srivastav of the People Union for Civil Liberties remains the champion of the cause and its true leader. Hundreds of other activists work without recognition in the field feeding the Supreme Court with

information. The Government Commissioners, Dr. N. C. Saxena and S. K. Sankaran, have done a passionate and erudite job. Jean Dreze and Harsh Mandar have put in relentless work. The Human Rights Law Network (HRLN) Legal team have found their way through rooms full of documents. The assistants to the Commissioners have kept up the pressure on the State Governments month after month. The campaign for the 'Right to Food' is gaining momentum.

This **first volume** of the HRLN's 'Right to Food' explores the basis of the revolutionary steps taken by the Indian Supreme Court, in upholding Article 21 of the Indian Constitution.

This volume is divided into four substantive sections.

The first section contains the **ORDERS OF THE SUPREME COURT** itself, these being the result of an on-going legal petition in which the HRLN has been involved for over 3 years. The petitions, and the Orders handed down as a result of them, are the basis for the substantial and growing campaign to guarantee the right to food for the people. These Judgements are the basis in law on which it is incumbent on the Government to act. **They are also the Judgements that the rest of the world is watching, the first of their kind.** As such, they are contained as an entire and substantial section because they are the platform on which the rest of these volumes, as well as the effective realisation of the Right to Food itself, are and will be built.

The second section contains all of the **REPORTS OF THE COMMISSIONERS to the Supreme Court.** The Commissioner's were appointed to oversee the compliance, the progress and effectiveness of the implementation of the Orders of the Supreme Court, and their report's detail just that. The report's also suggest recommendations as to how the realisation of the Supreme Court Orders may be better facilitated and effected, in a practical sense.

In the third section, we have included the two recorded **PROCEEDINGS OF THE NATIONAL HUMAN RIGHTS COMMISSION** (NHRC). These proceedings and their recommendations are extremely persuasive for any who are interested in the realisation of the right to food.

The fourth section of this volume contains **ARTICLES** from qualified observers and protagonists involved in the development of the Right to Food in India. The incisive critical analysis of the process and progress

made on the Right to Food, the implementation of the Orders of the Supreme Court and the effectiveness of and necessity for that implementation process, are the substance of articles included. The fourth section gives but a flavour of the type of critical analysis that will be focussed on in the second volume. In the second volume we will also include updates on the court case, and the progress of the campaign generally.

The fight for **the fundamental right to food for all** is very much ongoing: though battles have been won in the Courts, the outcome of the war is still to be decided...

The Editors
10th May 2004.



# Orders of the Supreme Court of India



**SUPREME COURT OF INDIA**
**RECORD OF PROCEEDINGS**
**WRIT PETITION (CIVIL) NO. 196 OF 2001**

**PEOPLE'S UNION FOR CIVIL LIBERTIES**
.....PETITIONER(S)

VERSUS

**UNION OF INDIA & ORS.**
.....RESPONDENT(S)

23.7.2001 This petition is called for hearing today

CORAM: HON'BLE MR. JUSTICE B. N. KRIPAL
HON'BLE DR. JUSTICE K. G. BALAKRISHNAN

For Petitioner(s) Mr. Colin Gonsalves, Adv.
Mr. Jawahar Raja, Adv.
Ms. Aparna Bhat, Adv.

For Respondent(s) Mr. Soli Sorabjee, Attorney General
Ms. Meenakshi Arora, Adv.
B. V. Balaram Das, Adv.

UPON hearing the court made the following

**ORDER**

Counsel for the Petitioner is permitted to file a fresh application for interim relief. A copy of the same be given to the counsel for the Union of India as well as to the counsel for the States and for the Food Corporation of India.

Learned Attorney General states that this should not be regarded as an adversarial litigation and it is a matter of concern for all.

In our opinion, what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst

plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and no-existent leading to mal-nourishment, starvation and other related non problems.

Reply affidavits be filed within two weeks by the States and the Union of India as well as the Food Corporation of India.

In the meantime, we are sure that the responsible Governments will act for the benefit of their people. By way of an interim order, we direct the States to see that all the PDS shops, if closed, are re-opened and start functioning within one week from today and regular supplies made.

Leave is granted to the Petitioner to implead other States also as parties to this petition. On such an application being filed today, notice to issue to them.

List the matter for further consideration on 20th August, 2001.

**SUPREME COURT OF INDIA**
**RECORD OF PROCEEDINGS**
**WRIT PETITION (CIVIL) NO. 196 OF 2001**

**PEOPLE'S UNION FOR CIVIL LIBERTIES**

.....PETITIONER(S)

VERSUS

**UNION OF INDIA & ORS.**

.....RESPONDENT(S)

20.8.2001 This petition is called for hearing today

CORAM: HON'BLE MR. JUSTICE B. N. KRIPAL
HON'BLE DR. JUSTICE N. SANTOSH HEGDE
HON'BLE DR. JUSTICE BRIJESH KUMAR

For Petitioner(s) Mr. Colin Gonsalves, Adv.
Dr. Yug Choudhary, Mr. Jawahar Raja,
Mr. P. Ramesh Kumar
Ms. Aparna Bhat, Adv.

For Respondent(s) Mr. Soli Sorabjee, Attorney General
Ms. Meenakshi Arora, Adv.
Mr. Manish Singhvi, Adv.
Mr. B. V. Balaram Das, Adv.

UPON hearing the court made the following

**ORDER**

The anxiety of the Court is to see that the poor and the destitute and the weaker sections of the society do not suffer from hunger and starvation. The prevention of the same is one of the prime responsibilities of the Government – whether Central or the State. How this is to be ensured would be a matter of policy which is best left to the Government. All that the Court has to be satisfied and which it may have to ensure is that the foodgrains which are overflowing in the storage receptacles, especially of FCI godowns, and which are in abundance, should not be wasted by dumping into the sea or eaten by rats. Mere schemes without any implementation are of no use. What is important is that the food must reach the hungry.

The Attorney General states that the case may be adjourned by a short date for considering what interim directions can or should be issued by this Court. A brief affidavit in this behalf may be filed by the Union of India. Other States who have not filed affidavits should also file the same within 10 days.

To come up on 3rd September, 2001.

**SUPREME COURT OF INDIA**
**RECORD OF PROCEEDINGS**
**WRIT PETITION (CIVIL) NO. 196 OF 2001**

**PEOPLE'S UNION FOR CIVIL LIBERTIES**

…..,PETITIONER(S)

VERSUS

**UNION OF INDIA & ORS.**

……RESPONDENT(S)

17.9.2001 This petition is called for hearing today

CORAM: HON'BLE MR. JUSTICE B. N. KRIPAL
HON'BLE DR. JUSTICE ASHOK BHAN

For Petitioner(s) Mr. Colin Gonsalves, Adv.
Dr. Yug Choudhary, Mr. Jawahar Raja,
Mr. P. Ramesh Kumar
Ms. Aparna Bhat, Adv.

For Respondent(s) Mr. Soli Sorabjee, Attorney General
Ms. Meenakshi Arora, Adv.
Mr. B. V. Balaram Das, Adv.

UPON hearing the court made the following

**ORDER**

With reference to this Court's direction dated 3rd September, 2001 requiring 16 States & Union Territories who, according to the learned Attorney General, had not identified the below poverty line families under the Antyodaya Anna Yojana, to identify, we are not satisfied that any such exercise in the right earnestness has been undertaken. Some of the States mention that the exercise is underway. Considering the seriousness of the matter, one further opportunity is granted to these 16 States and Union Territories to comply with the Central Government's directions within three weeks and to inform the Central Government about the number of below poverty line families under the Antyodaya Anna Yojana which they have identified. Copies of the said communication by the said 16 States/Union Territories should also be forwarded to the Attorney General who will inform the Court on the next date of hearing whether compliance has been made or not.

In I. A. No. 8/2001 at pages 66-68, certain schemes of the Central Government are mentioned which are required to be implemented by the State Governments. These schemes are: Employment Assurance Scheme which may have been replaced by a Sampurna Gramin Yojana, Mid-day Meal Scheme, Integrated Child Development Scheme, National Benefit Maternity Scheme for BPL pregnant women, National Old Age Pension Scheme for destitute persons of over 65 years, Annapurna Scheme, Antyodaya Anna Yojana, National Family Benefit Scheme and Public Distribution Scheme for BPL and APL families. The Chief Secretaries of all the States and the Union Territories are hereby directed to report to the Cabinet Secretary, with copy to the learned Attorney General, within three weeks from today with regard to the implementation of all or any of these Schemes with or without any modification and if all or any of the Schemes have not been implemented then the reasons for the same.

The Central Government shall collate all the facts and thereafter take necessary action in order to ensure the implementation of the said Schemes. A Status Report with regard thereto may be filed in Court within five weeks. Before giving the Status Report, the Central Government will also ascertain with regard to the actual implementation of the various Schemes. In the meantime, we direct all the State Governments to forthwith lift the entire allotment of food-grains from the Central Government under the various Schemes and disburse the same in accordance with the Schemes.

The Food for Work Programme in the scarcity areas should also be implemented by the various States to the extent possible.

To come up on 5th November, 2001.

**THE SUPREME COURT OF INDIA**
**CIVIL ORIGINAL JURISDICTION**
**WRIT PETITION (CIVIL) NO. 196 OF 2001**

**PEOPLE'S UNION FOR CIVIL LIBERTIES**

..... PETITIONER(S)

VERSUS

**UNION OF INDIA & ORS.**

..... RESPONDENT(S)

**O R D E R**

After hearing learned counsel for the parties we issue, as an interim measure, the following directions:

1. TARGETED PUBLIC DISTRIBUTION SCHEME (TDPS)

i) It is the case of the Union of India that there has been full compliance with regard to the allotment of foodgrain in relation to the TDPS. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the frame-work of the Scheme.

ii) The States are directed to complete the identification of BPL families, issuing of cards and commencement of distribution of 25 kgs. grain per family per month latest by 1st January, 2002.

iii) The Delhi Govt. will ensure that TDPS application forms are freely available and are given and received free of charge and there is an effective mechanism in place to ensure speedy and effective redressal of grievances.

2. ANTYODAYA ANNA YOJANA

i) It is the case of the Union of India that there has been full compliance with regard to the allotment of foodgrain in relation to Antyodaya Anna Yojana. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

ii) We direct the States and the Union Territories to complete identification of beneficiaries, issuing of card and distribution of grain under this Scheme latest by 1st January, 2002.

iii) It appears that some Antyodaya beneficiaries may be unable to lift grain because of penury. In such cases, the Centre, the State and the Union Territories are requested to consider giving the quota free after satisfying itself in this behalf.

3. MID-DAY MEAL SCHEME (MDMS)

i) It is the case of the Union of India that there has been full compliance with regard to the Mid-Day Meal Scheme (MDMS). However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

ii) We direct the State Governments/Union Territories to implement the Mid-Day Meal Scheme by providing every child in every Government and Government assisted Primary Schools with a prepared mid-day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days. Those Governments providing dry rations instead of cooked meals must within three months start providing cooked meals in all Government and Government aided Primary Schools in half the Districts of the State (in order of poverty) and must within a further period of three months extend the provisions of cooked meals to the remaining parts of the State.

iii) We direct the Union of India and the FCI to ensure provision of fair average quality grain for the Scheme on time. The States/Union Territories and the FCI are directed to join inspection of foodgrains. If the foodgrain is found, on joint inspection, no to be of fair average quality, it will be replaced by the FCI prior to lifting.

4. NATIONAL OLD AGE PENSION SCHEME (NOAPS)

(i) It is the case of the Union of India that there has been full compliance with regard to the National Old Age Pension Scheme. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

(ii) The States are directed to identify the beneficiaries and to start making payments latest by 1st January, 2002.

(iii) We direct the State Governmens/Union Territories to make payments promptly by the 7th of each month.

5. ANNAPURNA SCHEME

The States/Union Territories are directed to identify the beneficiaries and distribute the grain latest by 1st January, 2002.

6. INTERGRATED CHILD DEVELOPMENT SCHEME (ICDS)

(i) We direct the State Govts./Union Territories to implement the Integrated Child Development Scheme (ICDS) in full and to ensure that every ICDS disbursing centre in the country shall provide as under:

(a) Each child up to 6 years of age to get 300 calories and 8-10 grams of protein;

(b) Each adolescent girl to get 500 calories and 20-25 grams of protein;

(c) Each pregnant woman and each nursing mother to get 500 calories and 20-25 grams of protein;

(d) Each malnourished child to get 600 calories and 16-20 grams of protein;

(e) Have a disbursement centre in every settlement.

(ii) It is the case of the Union of India that there has been full compliance of its obligations, if any, under the Scheme. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

7. NATIONAL MATERNITY BENEFIT SCHEME (NMBS)

(i) We direct the State Govts./Union Territories to implement the National Maternity Benefit Scheme (NMBS) by paying all BPL pregnant women Rs.500/- through the sarpanch, 8-12 weeks prior to delivery for each of the first two births.

(ii) It is the case of the Union of India that there has been full compliance of its obligations under the Scheme. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

8. NATIONAL FAMILY BENEFIT SCHEME

(i) We direct the State Govts./Union Territories to implement the National Family Benefit Scheme and pay BPL families Rs.10,000/- within four weeks through a local sarpanch, whenever the primary bread winner of the family dies.

9. We direct that a copy of this order be translated in regional languages and in English by the respective States/Union Territories and prominently displayed in all Gram Panchayats, Government School Buildings and Fair Price Shops.

10. In order to ensure transparency in selection of beneficiaries and their access to these Schemes, the Gram Panchayats will also display a list of all beneficiaries under the various Schemes. Copies of the Scheme and the list of beneficiaries shall be made available by the Gram Panchayats to members of Public for inspection.

11. We direct Doordarshan and AIR to adequately publicise various Schemes and this order.

We direct the Chief Secretaries of each of the State and Union Territories to ensure compliance of this order. They will report compliance by filing affidavits in this Court within 8 weeks from today with copies to the Attorney General and Counsel for the Petitioner.

We direct liberty to the Union of India to file affidavit pursuant to the order of this Court date 21st November, 2001.

List the matter for further orders on 11th February, 2002. In the meanwhile, liberty is granted to the parties to apply for further direction, if any.

Sd/-
B. N. KIRPAL J.

Sd/-
K. G. BALAKRISHNAN J.

New Delhi
November 28, 2001

**THE SUPREME COURT OF INDIA**
**CIVIL ORIGINAL JURISDICTION**
**WRIT PETITION (CIVIL) NO. 196 OF 2001**

**PEOPLE'S UNION FOR CIVIL LIBERTIES**

..... PETITIONER(S)

VERSUS

**UNION OF INDIA & ORS.**

..... RESPONDENT(S)

**O R D E R**

After hearing learned counsel for the parties we issue the following directions:

(a) The Gram Panchayats shall frame employment generation proposals in accordance with the Sampoorna Gramin Rozgar Yojana (SGRY) guidelines for creation of useful community assets that have the potential for generating sustained and gainful employment such as water and soil conservation, afforestation and agro-horticulture, salvipasture, minor irrigation and link roads. These proposals shall be approved and sanctioned by the Gram Panchayats and the work started expeditiously.

(b) The respondents shall focus the SGRY programme towards agricultural wage earners, non-agricultural unskilled wage earners, marginal farmers and, in particular, SC and ST persons whose wage income constitutes a reasonable proportion of their household income and to give priority to them in employment, and within this sector shall give priority to women.

(c) The respondents shall make the wage payment on a weekly basis.

(d) The respondents shall prohibit the use of contractors in the SGRY programme.

(e) The Central Government shall make financial releases under the different employment generation schemes to each State on schedule, provided that the State Governments fulfil the conditions as prescribed by the SGRY. The State Governments are directed to fulfil these conditions and implement the SGRY expeditiously. The State Govern-

ment will furnish utilisation certificate and it is only on the furnishing of the same that further amounts shall be released. The funds provided shall only be utilised in respect of SGRY programme.

(f) The Gram Sabhas are entitled to conduct a social audit into all Food/Employment schemes and to report all instances of misuse of funds to the respective implementing authorities, who shall on receipt of such complaints, investigate and taken appropriate action in accordance with law.

(g) On a complaint being made to the Chief Executive Officer of the Zilla Panchayat (CEO)/Collector regarding non-compliance of the orders of this Court the Concerned CEO/Collector shall record the salient features of the complaint in a register maintained for this purpose, acknowledge receipt of the complaint and forthwith secure compliance with this Court's order.

(h) The CEO/Collector of all the Districts in the States and territories shall scrutinize the action taken by all the implementing agencies within their jurisdiction to ensure compliance with this court's orders and report to the Chief Secretary.

(i) The responsibility for implementation of the order of this Court shall be that of the CEO/Collector. The Chief Secretary will ensure compliance with the order of this Court.

(j) Dr. N. C. Saxena, former Planning Secretary, Government of India, and Mr. S. R. Sankaran, former Secretary, Rural Development, Government of India, shall function as Commissioners of this Court for the purpose of looking into any grievance that may persist after the above-mentioned grievance resolution procedure has been exhausted.

(k) On the Commissioner's recommending a course of action to ensure compliance with this Court's order, the State Government/Union Territory administrations, shall forthwith act upon such recommendation and report compliance.

(l) The Commissioners shall be at liberty to take the assistance of individuals and reliable organizations in the State and Union Territories. All officials are directed to fully cooperate with such persons/organizations, to bring about effective monitoring and implementation of the order of this Court.

(m) The Gram Sabhas are empowered to monitor the implementation of the various schemes and have access to relevant information relating to, inter alia, section of beneficiaries and the disbursement of benefits. The Gram Sabhas can raise their grievance(s) in the manner set out above and the redressal of the grievance(s) shall be done accordingly.

(n) It has been stated by the Petitioner that the identification of BPL families is not being done properly and that the criteria for the identification of the BPL families are neither clear nor uniform. The Central and the State Governments are directed to frame clear guidelines for proper identification of BPL families.

(o) The respondents shall ensure that the ration shops remain open throughout the month, during fixed hours, the details of which will be displayed on the notice board.

To come up for further directions after 12 weeks.

Sd/-
CJI

Sd/-
ARIJIT PASAYAT J.

Sd/-
K. SEMA J.

New Delhi
May 8, 2002

**SUPREME COURT OF INDIA**
**RECORD OF PROCEEDINGS**
**WRIT PETITION (CIVIL) NO. 196 OF 2001**

**PEOPLE'S UNION FOR CIVIL LIBERTIES**

.....PETITIONER(S)

VERSUS

**UNION OF INDIA & ORS.**

.....RESPONDENT(S)

29.10.2002 This petition is called for hearing today

CORAM: HON'BLE MR. JUSTICE B. N. KRIPAL
HON'BLE DR. JUSTICE Y. K. SABHARWAL
HON'BLE DR. JUSTICE ARIJIT PASAYAT

For Petitioner(s) Mr. Colin Gonsalves, Adv.
Ms. Sweta Kakkad, Mr. P. Ramesh Kumar
Ms. Aparna Bhat, Adv.

For Respondent(s) Mr. Soli Sorabjee, Attorney General
Ms. Meenakshi Arora, Adv.
Mr. Manish Singhvi, Adv.
Mr. B. V. Balaram Das, Adv.

UPON hearing the court made the following

**ORDER**

On 8th May, 2002, detailed directions were given by this Court with regard to the implementation of various schemes which had been floated for giving relief to the poor, impoverished and the hungry. In the said order Dr. N. C. Saxena and Mr. S. R. Sankaran were appointed as Commissioners of the Court, inter alia, for the purpose of looking into any grievance that may persist after the grievance resolution procedure set out in the said order has been exhausted.

Pursuant to the said order Dr. N. C. Saxena has filed the first Report dated 12th October, 2002. In the said Report, there is a reference with regard to the food requirement in the State of Rajasthan. We heed not go into this aspect but what requires to be considered is the directions which are sought for by the Commissioners in the said Report.

We have heard the learned Attorney General, Mr. Colin Gonsalves and Dr. A. M. Singhvi and in furtherance and in addition to our aforesaid order of 8th May, 2002, we issue the following directions:

The Chief Secretaries/Administrators of the States/Union Territories are directed to respond promptly to the correspondences addressed to them by the Commissioners and provide full information as required.

In case of persistent default in compliance with the orders of this Court, concerned Chief Secretaries/Administrators of the States/Union Territories shall be held responsible.

The Chief Secretaries/Administrators are given one last chance to translate and permanently display the order dated 28th November, 2001 and 8th May, 2002 of this Court, on all the Gram Panchayats, school buildings and fair price shops and give wide publicity on All India Radio and Doordarshan. This should be complied with within eight weeks from today.

It is clarified that the scope of the work of the Commissioners appointed by this Court is to include the monitoring of the implementation of this Court's orders as well as the monitoring and reporting to this Court of the implementation by the respondents of the various welfare measures and schemes.

The respective State Governments shall appoint Government officials as Assistants to the Commissioners within eight weeks from today. The appointment shall be made by the Chief Secretaries/Administrators of the States/Union Territories in consultation with Dr. N. C. Saxena. The Assistants so appointed will render such assistance to the Commissioners as the Commissioners may require and help them in discharging the responsibility which has been cast upon them.

In order to ensure that there is effective implementation of the Governmental Schemes, the States as well as the Central Government shall appoint one Nodal Officer each. The Assistants appointed to help the Commissioners, as well as the Commissioners would remain in constant touch with the said Nodal Officers for the purpose of ensuring the due implementation of the Schemes.

The Nodal Officers so appointed shall provide to the Commissioners full access to relevant records and provide relevant information.

Whenever the States/Union Territories have a meeting in relation to food scarcity it will be appropriate that the Commissioners and in their absence the Assistants are notified to participate in the same.

It is the duty of each State/Union Territory to prevent deaths due to starvation or malnutrition. If the Commissioner reports and it is established to the satisfaction of the Court that starvation death has taken place, the Court may be justified in presuming that its orders have not been implemented and the Chief Secretaries/Administrators of the States/ Union Territories may be held responsible for the same.

We reaffirm our earlier order dated 8th May, 2002 and direct the parties to comply with the same, and, in particular the Central Government shall formulate the scheme to extend the benefits of the Antyodhaya Anna Yojana to the destitute section of the population.

Adequate funds shall be made available to the Commissioners by the Union of India to enable them to perform the functions. To await the next Report of the Commissioners, and to come up for further orders after four months before a Bench of which Hon'ble Mr. Justice Y. K. Sabharwal is a Member.

(S. L. GOYAL)

Kalyani
Court Master

**SUPREME COURT OF INDIA**
**RECORD OF PROCEEDINGS**
**WRIT PETITION (CIVIL) NO. 196 OF 2001**

**PEOPLE'S UNION FOR CIVIL LIBERTIES**

.....PETITIONER(S)

VERSUS

**UNION OF INDIA & ORS.**

.....RESPONDENT(S)

2.5.2003 This petition is called for hearing today

CORAM: HON'BLE MR. JUSTICE Y. K. SABHARWAL
HON'BLE DR. JUSTICE H. K. SEMA

For Petitioner(s) Mr. Colin Gonsalves, Adv.
Mr. P. Ramesh Kumar
Ms. Aparna Bhat, Adv.

For Respondent(s) Mr. Mukul Rohatgi, ASG,
Mr. Manish Singhvi, Adv.
Ms. Meenakshi Arora, Adv.
Mr. Manish Singhvi, Adv.
Mr. B. V. Balaram Das, Adv.

UPON hearing the court made the following

**ORDER**

In this petition that was filed little more than two years back various issues have been framed many of which may have a direct and important relevance to the very existence of poor people; their right to life and the right of food of those who can ill-afford to provide to their families two meals a day. Their misfortune becomes further grave during times of famines and drought. The petitioner has sought directions for enforcement of Famine Code. The petitioner seeks immediate release of surplus foodgrains lying in the stocks of Union of India for drought affected areas. Directions are also sought requiring the Government to frame fresh schemes of Public Distribution for Scientific and Reasonable Distribution of foodgrains. In order that any meaningful and immediate relief is given by the Central Government and the

State Government without any delay, various applications have been filed by the petitioner. Considering the importance of the matter particularly in relation to those who are Below Poverty Line (BPL) an order was made by this Hon'ble Court on 3rd March, 2003 requiring the respondents to file replies to the applications and place on record the requisite materials, while adjourning the case to 8th April, 2003. In respect of the directions that the Central Government shall formulate the scheme to extend the benefits of the Antyodaya Anna Yojana (AAY) to destitute section of the population, learned Attorney General stated on the last date of hearing which was on 3rd March, 2003 that for the budget for the year 2003-2004 a provision has been made for it. Despite the order of this Court the document has not been placed on record. The approach of Government is more distressing since this matter which was to come up on 8th April, 2002, has come up today after nearly four weeks of the scheduled date but neither the documents have been filed nor other aspects required to be dealt with in the last order have been adverted to. In I. A. 25 one of the grievance that has been made is that names of various persons have been removed from BPL arbitrarily. In I. A. 26 it has been highlighted that the allocation made for supply of grain in lieu of the labour of BPL family has been recommended to be reduced from 10 kgs. per day per household to 5 kgs. and for 10 days in every month till June, 2003. In terms of the last order the specific instructions were required to be obtained on the relevant schemes mentioned in I. A.26 including in the matter of reduction of supply of the grain and the number of days. In I. A.26 directions sought against Union of India are to release 20 million tonnes foodgrains, at the very minimum, free of cost every year for the Food-for-Work Programmes besides other reliefs. Response from Government was sought within three weeks.

Declining request for filing of replies we have heard learned counsel since it is necessary to consider issuing certain directions without any further delay with a view to provide some ad hoc interim relief to a class which deserves a sympathetic approach. We have heard Mr. Colin Gonsalves, learned counsel for the petitioner, Mr. Mukul Rohtagi, learned Additional Solicitor General for Union of India, besides Mr. B. B. Singh, for State of Bihar, Mr. Ashok Srivastava, for State of U. P. and Ms. Indra Sawhney, for Food Corporation of India.

This Court in various orders passed in the last two years has expressed its deep concern and it has been observed, in one of the orders, that what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially

in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existent leading to malnutrition, starvation and other related problems. The anxiety of the Court is to see that the poor and destitute and the weaker sections of the society do not suffer from hunger and starvation. The prevention of the same is one of the prime responsibilities of the Government – whether Central or the State. Mere schemes without any implementation are of no use. What is important is that the food must reach the hungry.

Article 21 of the Constitution of India protects for every citizen a right to live with human dignity. Would the very existence of life of those families which are below poverty line not come under danger for want of appropriate schemes and implementation thereof, to provide requisite aid to such families? Reference can also be made to Article 47 which, inter alia, provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

In the light of the aforesaid, we are of the view that for the time being for the months of May, June and July, 2003, it is necessary to issue certain directions so that some temporary relief is available to those, who deserve it the most.

Our attention has been drawn to the Famine Code (Annexure Petitioners/Appellants herein-VIII). That Famine Code, we are informed, is the one formulated by State of Rajasthan and similar Codes have been formulated by other States. A perusal of this Famine Code shows that first three chapters deal with the steps to be taken as preventive measure before the famine and drought and Chapter IV onward deal with declaration of distress and commencement of relief, setting out in detail the reliefs and the officers responsible thereof. One of the reliefs claimed in the petition is for enforcement of the Famine Code. Learned Additional Solicitor General submitted that the Famine Codes were formulated long time back and many of the aspects have been dealt with under various schemes that have been formulated later like Sampoorna Gramin Rozgar Yojana (SGRY). This should not present any difficulty in implementing the Famine Code for the time being. Under the circumstances, we direct the implementation of the Famine Code for the period May, June and July, 2003 as and when and where situation may call for it, subject to the condition that if in subsequent schemes the relief to be

provided and preventive measures to be undertaken, during famine and drought, are better than the one stipulated by the Famine Code, the same may be implemented instead of Famine Code.

The next aspect pertains to Food-for-Work. We have been taken through Employment Assurance Scheme of the Government of India. Though the same stands merged into SGRY, but it has been submitted by learned counsel for the petitioner that the reliefs under SGRY, instead of improvement, have since been reduced. SGRY provides for an outlay of only Rs. 5000 crores and 5 million tonnes of free grain. It was pointed out that as far as the guarantee of employment is concerned, in the Employment Assurance Scheme, it was 100 days, whereas according to SGRY, it is 15 days and rather 10 days according to States and at the most 20 days which is according to Union of India. Our attention has also been drawn to the Report of the High Level Committee on Long-Term Grain Policy, July, 2002. A detailed reference to the Report has been made in I. A.25. That Committee was constituted by Department of Food and Public Distribution, Ministry of Consumer Affairs and Food and Public Distribution, Union of India. In the summary and recommendation the Report, inter alia, states that an important social and security measure in the context is provision for employment on public works. While a food component can and could be part of such employment generation in the short run or in periods of local food shortages in the long run, employment generation should be distinct from the food delivery system. This should not, however, undermine the importance of employment and income generation in eliminating hunger and malnutrition. The Report further states that no long run policy can be effective unless present imbalances, specifically, the large excess holding of public stocks. The Report has outlined a two year Plan of Action which includes immediate steps to lower procurement inflows on the one hand, and to raise outflows, on the other hand, by several means including a large Food-for-Work programme, a revitalized universal PDS and other grain-based welfare schemes. It has also recommended a major food-based employment programme for the short run. In the ultimate, the recommendation of the said committee is that the present SGRY scheme should be expanded and *at least doubled* (emphasis supplied). It says that this implies doubling grain allocation from 5 to 10 million tonnes, and also an increase in the cash allocation to States by at least 5000 crores.

The prayer of the petitioner, in fact, is for allocation of 20 million tonnes though, according to it, the requirement is of 40 million tonnes. The High Level Committee was appointed by the Government of India. It

gave its Report in July, 2002. Ten months have passed. We do not know what consideration the report has received if at all it has been considered by the Government. We may also note that the Report has further mentioned that currently, about half of the food subsidy is being spent on holding stocks in excess of the buffer stock levels necessary for food security. As these stocks are reduced to normal levels, very large fiscal resources of around Rs.10,000 crores annual will become available.

While directing the Government of India to place on record by 8th August, 2003, the consideration bestowed on the Report of the Committee and the decision, if any, we direct that on pro rata basis, the recommendation that the present SGRY scheme should be expanded, at least doubled, be implemented, both in regard to allocation of foodgrain as also cash, for the months of May, June and July. The State Government shall lift those allocations and ensure that the same reach those for whom it is meant. In case, however, after considering the response of Union of India, we hold that the allocations do not deserve to be doubled as recommended, the question of adjustment being made for the future supplies on the basis of the allocations in terms of SGRY can be considered.

Further, it is necessary to issue immediate directions to evolve a system whereby eligible BPL families, which may not be on BPL list, are so included as also regarding the ration shops and other outlets remaining open and giving deliveries of foodgrains to those, who are on the list and hold the requisite cards. For the present, we are not going into the question whether only 41% of the poorest households are on BPL list. We may note that in May last year an order was passed that the respondents shall ensure that the ration shops remain open throughout the month during fixed hours and the details of which shall be displayed in the notice board.

To facilitate the supply of the grain, we issue the following directions:

(1) Licensees, who

(a) do not keep their shops open throughout the month during the stipulated period,

(b) fail to provide grain to BPL families strictly at BPL rates and no higher,

(c) keep the cards of BPL households with them,

(d) make false entries in the BPL cards,

(e) engage in black-marketing or siphoning away of grains to the open market and hand over such ration shops to such other person/organizations,

shall make themselves liable for cancellation of their licenses. The concerned authorities/functionaries would not show any laxity on the subject.

(2) Permit the BPL household to buy the ration in installments.

(3) Wide publicity shall be given so as to make BPL families aware of their entitlement of foodgrains.

What was observed in the order dated 23rd July, 2001 in regard to the making available of food to aged, infirm, disabled etc. has already been noticed hereinabove. According to the figures supplied by the petitioner, approximately 1.5 crore persons are eligible to get Antyodaya Anna Yozana (AAY) Card. We direct the Government of India to place on AAY category the following groups of persons:

(1) Aged, infirm, disabled, destitute men and women, pregnant and lactating women, destitute women;

(2) widows and other single women with no regular support;

(3) old persons (aged 60 or above) with no regular support and no assured means of subsistence;

(4) households with a disabled adult and assured means of subsistence;

(5) households where due to old age, lack of physical or mental fitness, social customs, need to care for a disabled, or other reasons, no adult member is available to engage in gainful employment outside the house;

(6) primitive tribes

What we have stated above in regard to BPL Cardholders for effective supply of grains to them, would equally apply for those, who are on AAY list.

Regarding Mid-Day Meal, on 28th November, 2001, this Court directed the State Government/Union Territories to implement the Mid-Day Meal Scheme (MDMS) by providing every child in every Government and Government assisted Primary School with a prepared mid-day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days. It was further directed that those Governments which provide dry rations instead of cooked meals, within three months start providing cooked meals in all Govt. and Govt. aided Primary Schools in half the Districts of the State (in order of poverty) and must within a further period of three months extend the provision of cooked meals to the remaining parts of the State. Some States in implementation of the said direction are supplying cooked mid-day meal to the students. We are, however, told that despite the fact that 1½ years has passed, some of the States have not even made a beginning. Particular reference has been made to States of Bihar, Jharkhand and Uttar Pradesh. It is not in dispute that in these three States even a beginning has not been made whereas some of the other States are fully implementing directions for supply of cooked Mid-Day Meal. Counsel for Uttar Pradesh and Jharkhand could not give any satisfactory reason for non-implementation. No reply or affidavit was filed by the said State. In so far as the State of Bihar is concerned, Mr. B. B. Singh has drawn our attention to the affidavit filed by Secretary and Relief Commissioner, Relief and Rehabilitation Department, Government of Bihar, inter alia stating that the State Government proposes to implement this scheme in few blocks on a pilot basis through panchayat, pending settlement of the issue regarding funding of conversion cost and to establish the capacity of the panchayat raj institution to supply hygienic cooked meals to all eligible students on a regular basis, without compromising teaching activities. The affidavit could not be more vague than what it is. When they propose to start, in how many districts they propose to start, what scheme has been formulated and every other conceivable detail is missing from the affidavit. We are told that there are 38 districts in the State of Bihar. For the present, we direct the said State to implement the cooked Mid-Day Meal Scheme in terms of the directions of this Court in at least 10 Districts, which may be most poor according to the State's perception.

We also direct the State of Uttar Pradesh, Jharkhand and other States to make a meaningful beginning of the cooked Mid-Day Meal Scheme in at least 25% of the District, which may be most poor.

By order dated 8th May, 2002, Dr. N. C. Saxena, former Planning Secretary, Government of India and Mr. S. R. Sankaran, former Secretary,

Rural Department, Government of India were appointed to function as Commissioners of this Court for the purpose of looking into any grievance that may persist after the grievance resolution procedure has been exhausted. In subsequent orders, directions have been issued to the Government to fully cooperate with the learned Commissioners. Mr. Sankaran has said to have written a letter to the Government expressing personal difficulty in functioning as Commissioner on account of ill-health. Mr. Gonsalves states that he has recovered and now is in a position to so function. We would, therefore, request Mr. Sankaran to start functioning as Commissioner with Dr. Saxena in terms of the orders already passed.

The copies of the order shall be sent to the Chief Secretaries of all States/Union Territories. The State Governments/Union Territories are directed to file affidavits showing the compliance and extent thereof. The affidavits may be filed on or before 8th August, 2003. Union of India may also file its affidavit(s) by the same date. For further consideration the matter shall be placed on 19th August, 2003.

Sd/.....J

(Y. K. SABHARWAL)

Sd/.....J

(H. K. SEMA)

New Delhi,
May 2, 2003.

**SUPREME COURT OF INDIA**
**RECORD OF PROCEEDINGS**
**WRIT PETITION (CIVIL) NO. 196 OF 2001**

**PEOPLE'S UNION FOR CIVIL LIBERTIES**

.....PETITIONER(S)

VERSUS

**UNION OF INDIA & ORS.**

.....RESPONDENT(S)

Date: 05/05/03 The Petition was mentioned today.

CORAM: HON'BLE MR. JUSTICE Y. K. SABHARWAL
HON'BLE DR. JUSTICE H. K. SEMA

For Petitioner(s) Mr. Colin Gonsalves, Adv. (mentioned by)
Ms. Aparna Bhat, Adv.

For Respondent(s) Mr. B. V. Balaram Das, Adv. (N. P.)

UPON hearing the court made the following

**ORDER**

The matter has been mentioned by Mr. Colin Gonsalves, learned counsel for the petitioner. He has also produced copy of the letter dated 3rd May, 2003 written to the learned Attorney General for India in addition to the orders passed on 2nd May, 2003. None is present for the Union of India. Having heard learned counsel for the petitioner, we direct that till the next date of haring the Government of India will not insist the State Government to remove any person from the existing Below Poverty Line (BPL) list.

(P. D. Balodi)
Court Master

(V. P. Tyagi)
Court Master

**SUPREME COURT OF INDIA**
**RECORD OF PROCEEDINGS**
**WRIT PETITION (CIVIL) NO. 196/2001**

**PEOPLE'S UNION FOR CIVIL LIBERTIES**

.....PETITIONER(S)

VERSUS

**UNION OF INDIA & ORS.**

.....RESPONDENT(S)

(With appln. (s) for interim relief and directions and permission to submit addl. documents and office report)
(FOR FURTHER CONSIDERATION)

Date: 20/04/2004 This Petition was called on for hearing today.

CORAM: HON'BLE MR. JUSTICE Y. K. SABHARWAL
HON'BLE MR. JUSTICE B. N. AGRAWAL

For Petitioner(s) Mr. Colin Gonsalves, Sr. Adv.
Mr. P. Ramesh Kumar, Adv.
Ms. Aparna Bhat, Adv.

For UOI: Mr. Raju Ramachandran, Sr. Adv.
Ms. Meenakshi Arora, Adv.
Ms. Varuna Bhandari Gugnani, Adv.
for Mr. D. S. Mahra, Adv.

**ORDER**

MID-DAY MEAL SCHEME:
We have heard Mr. Colin Gonsalves, learned senior counsel appearing for the petitioner, Mr. Raju Ramachandran, learned Additional Solicitor General appearing for Union of India, Mr. M. L. Verma, learned senior counsel appearing for intervenor – Health India, and learned counsel representing various States. We have also perused the special report of the Committee dated 28th November, 2003 and report dated 28th January, 2004 and other relevant material on record. In one of the orders earlier passed, this Court had observed about the impact of this public interest litigation on the very existence of large sections of poor

people, their right to life and right to food to those who can ill-afford to provide to their families two meals a day and their misfortune becoming further grave during famine and drought.

On 28th November, 2001, this Court directed the State Governments/ Union Territories to implement Mid-Day Meal Scheme by providing every child in every government and government aided primary school with a prepared mid-day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days. The said order further directed that those governments which provide dry rations instead of cooked meals, within three months, should start providing cooked meals in all government and government aided primary schools in half of the districts of the State (in order of poverty) and must, within further period of three months, extend the provision of cooked meals to the remaining parts of the State.

By an order dated 29th October, 2002, it was made clear that in case of persistent default in compliance of the orders of this Court, the concerned Chief Secretaries/Administrators of the States/Union Territories shall be held responsible. It was brought to the notice of the Court that despite orders having been passed, some of the States had not even made a beginning. In the order dated 2nd May, 2003, this Court observed the manner in which the directions were being flouted in some of the States. In that order, specific reference was made to the States of Bihar, Jharkhand and Uttar Pradesh. The type of the affidavit that was filed has also been commented upon since it was not stated in the affidavit as to when the State of Bihar proposed to start the supply of mid-day meal, in how many districts they proposed to start it and what scheme had been formulated. The order noticed that every conceivable detail had been missing. Ultimately, the State of Bihar was directed to make a beginning by supplying cooked mid-day meal and implement the said scheme in at least ten districts which might be most poor according to the State's perception. Similarly, the States of Uttar Pradesh, Jharkhand and other States were also directed to make a meaningful beginning of the scheme in at least 25% of the districts which might be most poor.

After the orders were made on 2nd May, 2003, various reports have been filed in regard to the implementation of the directions for supply of the cooked mid-day meal in schools in terms of directions contained in the order dated 28th November, 2001.

We have perused the affidavits and heard learned counsel representing the States of Bihar, Uttar Pradesh, Maharashtra, Delhi, West Bengal,

Himachal Pradesh, Uttaranchal, Jharkhand, Madhya Pradesh and Haryana. There are other States and Union Territories as well in respect whereof the aforesaid Reports of the Commissioners have commented upon. Some of the States/Union Territories have not made even a beginning despite lapse of so many years; some have only made a partial beginning; some have made a token beginning and only few of the States have fully implemented the order in respect of cooked mid-day meals that was passed on 28th November, 2001.

Some of the States which claim that they have made a beginning and are partially implementing the scheme have also not given the full and complete details so that this Court could know the extent of the implementation. Most of the affidavits only set out the number of schools and the students where the scheme was being implemented. What was required to be done was to simply state as to how many schools in a particular State/Union Territory would be covered under the directions for supply of cooked mid-day meal, how many students in the said school would be eligible for the benefit and then give the number of the schools and the students who are being supplied cooked meals. The affidavits provide only a part of information without specifying the number of eligible schools and students.

Be that as it may, Table-1 to the second Report of the Commissioners sets out broadly the States which have implemented it fully or partially or have not responded to the queries of the Commissioners. We may, however, note that after the said Report, there has been some improvement by a token beginning having been made by some of the States. The Report of the Commissioners, on the basis of their earlier experience, states that nutritious mid-day meal at schools can be a highly effective way of protecting children from hunger and can also boost school attendance among girls. It also notices some of the areas where such meals are supplied even during the school vacations, especially in drought affected areas. None can question the desirability of extension of this facility even during vacations in drought affected areas where children are deprived of even one meal a day .

It is a matter of anguish that despite lapse of nearly three and a half years, the order dated 28th November, 2001 has not been fully implemented by all the States and Union Territories. As already stated earlier, many of the States have given only half-baked information and figures. Further, we wish to make it clear that the fact that some of the States were permitted to at least make a start in some of the districts in terms of the order dated 2nd May, 2003 does not mean that this Court

has modified or varied the earlier order dated 28th November, 2001. It is a constitutional duty of every State and Union Territory to implement in letter and spirit the directions contained in the order dated 28th November, 2001. We may also note that the suggestions given by Health India would be considered at an appropriate stage.

The petitioner has also made a reference to the announcement made by the Prime Minister extending the Mid-Day Meal Scheme upto 10th Standard during his address to the Nation on 15th August, 2003. The suggestion is that extension should be made operational at the earliest. In reply, it has been contended that once the mid-day meal scheme at primary level is consolidated, the question of extension of the scheme upto 10th Standard can be taken up in a phased manner. In this connection, it has been pointed out that the views of various States have been asked in regard to the cost and logistic requirements for the extension of the scheme upto 10th Standard.

Further, the petitioner, referring to the recommendations of the Abhijit Sen Committee appointed by Government of India regarding sharing of conversion cost of implementing the cooked Mid-Day Meal Scheme, suggests that the Government should implement that scheme. The Government is stated to be presently discussing the modalities with the concerned Ministries and Planning Commission to provide assistance for meeting with a part of conversion costs towards effective implementation of the said scheme.

Having regard to the aforesaid, in respect of cooked Mid-Day Meal Scheme, we issue the following directions:

1. All such States and Union Territories who have not fully complied with the order dated 28th November, 2001 shall comply with the said directions fully in respect of the entire State/Union Territory, preferably, on the re-opening of the primary schools after a long vacation of 2004 and, in any case, not later than 1st September, 2004.

2. All Chief Secretaries/Administrators are directed to file compliance report in regard to directions No.1 on or before 15th September, 2004.

3. The conversion costs for a cooked meal, under no circumstances, shall be recovered from the children or their parents.

4. In appointment of cooks and helpers, preference shall be given to Dalits, Scheduled Castes and Scheduled Tribes.

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5. The Central Government shall make provisions for construction of kitchen sheds and shall also allocate funds to meet with the conversion costs of food-grains into cooked mid-day meals. It shall also periodically monitor the low take off of the foodgrains.

6. In respect of the State of Uttaranchal, it has been represented that the scheme is being implemented in all the schools. It would be open to the Commissioners to inspect and bring it to the notice of the Court, if it is otherwise.

7. In drought affected areas, mid-day meal shall be supplied even during summer vacations.

8. An affidavit shall be filed by the Government of India, within three months, stating as to when it is possible to extend the scheme upto 10th Standard in compliance with the announcement made by the Prime Minister. The affidavit shall also state the time frame within which the Government proposes to implement the recommendations of the Abhijit Sen Committee in respect whereof the modalities have been discussed with the concerned Ministries and Planning Commission.

9. Attempts shall be made for better infrastructure, improved facilities (safe drinking water etc.), closer monitoring (regular inspection etc.) and other quality safeguards as also the improvement of the contents of the meal so as to provide nutritious meal to the children of the primary schools.

The issue as to the implementation of this scheme will be considered in the month of September, 2004.

SGR YOJANA—EMPLOYMENT GUARANTEE:

In respect of this Scheme, the following directions are issued:

1. The directions for doubling the foodgrains as also cash in terms of the order dated 2nd May, 2003 shall be applicable this year also.

2. The State Governments/Union Territories are directed to pay minimum wages to the workers under the scheme and shall stop use of labour displacement machines.

3. Access to all public documents including muster rolls shall be allowed to such persons who seek such access and the cost of supplying

documents shall not be more than the costs of providing copies of the documents.

4. The allocation of funds and foodgrains shall be timely made by the Central Government to the State Governments.

5. The State Governments are directed to utilise the entire allocation, as aforesaid, so that the allotted funds and foodgrains neither lapse nor result in reduction in subsequent years.

6. In case, some of the State Governments, as a result of financial constraints, wish to pay 100% wages in shape of foodgrains and not partly foodgrains and partly cash, it would be open to them to approach the Central Government. On examination of each case, the Central Government may permit payment of 100% wages in the shape of foodgrains.

ANTYODAYA ANNA YOJANA:

In regard to this scheme, the following directions are issued:

1. The Government of India shall issue, within two months, guidelines so that the existing condition of possession of a BPL card for inclusion in AAY category is dispensed with.

2. The State Governments should be directed by the Central Government to accelerate the issue of Antyodaya cards especially to primitive tribes. The guidelines issued to State Governments shall be implemented in letter and spirit.

List the Writ Petition on 27th April, 2004 for consideration of other Schemes.

.....J. (Y. K. SABHARWAL)

.....J. (B. N. AGRAWAL)

New Delhi,
April 20, 2004

**SUPREME COURT OF INDIA**
**RECORD OF PROCEEDINGS**
**WRIT PETITION (CIVIL) NO. 196/2001**

**PEOPLE'S UNION FOR CIVIL LIBERTIES**

.....PETITIONER(S)

VERSUS

**UNION OF INDIA & ORS.**

.....RESPONDENT(S)

(With appln. (s) for interim relief and directions and permission to submit addl. documents and office report)
(FOR FURTHER CONSIDERATION)

Date : 27/04/2004 This Petition was called on for hearing today.

CORAM: HON'BLE MR. JUSTICE Y. K. SABHARWAL
HON'BLE MR. JUSTICE B. N. AGRAWAL

For Petitione(s) Mr. Colin Gonsalves, Sr. Adv.
Mr. P. Ramesh Kumar, Adv.
Ms. Priya Kiran, Adv.
Ms. Aparna Bhat, Adv.

For UOI: Mr. Raju Ramachandran, ASG.
Ms. Meenakshi Arora, Adv.
Ms. Varuna Bhandari Gugnani, Adv.
for Mr. D. S. Mahra, Adv. &
Mr. B. V. B. Das, Adv.

UPON hearing the Court made the following

**ORDER**

NATIONAL SOCIAL ASSISTANCE PROGRAMME (NSAP):
We have further heard for some time Mr. Colin Gonsalves, learned senior counsel, and Mr. Raju Ramachandran, learned Additional Solicitor General. The various schemes for the poorer sections of the citizens of this country have been the subject matter of the orders passed by this Court from time to time. It seems that some States have discontinued some of the schemes. As an interim measure, till the matter is fully heard in detail, we direct that no scheme covered by the orders made by this Court including the National Old Age Pension

Scheme, National Family Benefit Scheme, in particular Annapurna, and National Maternity Benefit Scheme shall be discontinued or restricted in any way without the prior approval of this Court. In other words, it means that till further orders, the schemes would continue to operate and benefit all those who are covered by the schemes. We hope that the Government of India and the State Governments would simplify the procedure so that high proportion of eligible persons remain to be covered by the schemes. A copy of this order shall be sent to the Chief Secretaries of every State Government/Union Territory. The Union of India, through the concerned Ministry, shall also issue directives to the State Governments/Union Territories to comply with this order.

INTEGRATED CHILD DEVELOPMENT SCHEME (ICDS):
In respect of Integrated Child Development Scheme, directions were issued on 28th November, 2001. It seems that most of those who are covered by the said order are not getting benefit under the said scheme. We have heard the submissions of Mr. Gonsalves and perused the report submitted by the Commissioners and the directions sought. From the facts and figures that have been furnished to us, it seems evident that there is a large number of malnourished children between the age group of 0 to 6 years. These figures are based on the survey conducted under the National Family Benefit Health Scheme. The position is quite alarming. These young children are the future of the nation. Further, it appears that except Kerala and Tamil Nadu where the benefit under the scheme is said to be reaching to about 50 per cent of the children, in the rest of the country the average seems to be below 25 per cent. The position in the States of Bihar, Uttar Pradesh, Jharkhand and Uttaranchal seems to be quite alarming. According to the survey for the period 2002-2003 the access to supplementary nutrition for the children in Bihar reaches about 12.6 per cent of those who are otherwise covered by the scheme. Mr. Raju Ramachandran, learned ASG prays for a short adjournment to discuss the matter with the concerned officials and make submissions on the directions that may be issued to ensure the compliance of the Order dated 28th November, 2001.

As prayed, the case is adjourned to 29th April, 2004.

BELOW POVERTY LINE SCHEME (BPL)
The case may be put up for hearing on a non-miscellaneous day after re-opening of the Court after summer vacation.

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|---|---|---|
| (N. Annapurna) | (S. Thapar) | (V. P. Tyagi) |
| Court Master | PS to Registrar | Court Master |

**SUPREME COURT OF INDIA**
**RECORD OF PROCEEDINGS**
**WRIT PETITION (CIVIL) NO. 196/2001**

**PEOPLE'S UNION FOR CIVIL LIBERTIES**

.....PETITIONER(S)

VERSUS

**UNION OF INDIA & ORS.**

.....RESPONDENT(S)

(With appln. (s) for interim relief and interim directions and permission to submit addl. documents and office report)
(FOR FURTHER CONSIDERATION)

Date : 29/04/2004 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE Y. K. SABHARWAL
HON'BLE MR. JUSTICE B. N. AGRAWAL

For Petitioner(s) Mr. Colin Gonsalves, Sr. Adv.
Mr. P. Ramesh Kumar, Adv.
Ms. Seema Kumar, Adv.
Ms. Aparna Bhat, Adv.

For UOI: Mr. Raju Ramachandran, ASG.
Ms. Meenakshi Arora, Adv.
Mr. K. C. Kaushik, Adv.
Ms. Varuna Bhandari Gugnani, Adv.
for Mr. B. V. B. Das, Adv.

UPON hearing the Court made the following

**O R D E R**

With the assistance of learned counsel, we have perused various documents including Report No. 1 of 2000 prepared by CAG and a working paper on Health, Nutrition and Family Welfare Programme Review of Progress during the Ninth Plan Period by Planning Commission, Government of India (February, 2001). It is evident that the Integrated Child Development Scheme (ICDS) is perhaps the largest of all the food supplementation programmes in the world, and was initiated in the year 1975

with the following objectives as per the aforesaid document prepared by the Planning Commission.

i) To improve the health and nutrition status of children 0-6 years by providing supplementary food and by coordinating with state health departments to ensure delivery of required health inputs;

ii) To provide conditions necessary for pre-school children's psychological and social development through early stimulation and education;

iii) To provide pregnant and lactating women with food supplements;

iv) To enhance the mother's ability to provide proper child care through health and nutrition education;

v) To achieve effective coordination of policy and implementation among the various departments to promote child development.

From the facts and figures given in the documents it appears that despite the fact that for the development of children, in particular, mal-nourished and under nourished children, the scheme is elaborate and intends to cover all the children under the age group of 0-6 years but it appears that a lot more deserves to be done in the field to ensure that nutritious food reaches to those who are under nourished or mal-nourished or others covered under the scheme.

The food is supplied to children through Aanganwadi Centres (AWCS). In all, there are 6 lakh centres. The norms of Government of India provide for one centre for a population of 1000 (700 in case of tribal area). According to the petitioner, going by the said norms there should be 14 lac ACWS. It appears that according to the calculation of Government of India the AWCS would be 12 lakhs. We direct the Government of India to file within 3 months an affidavit stating the period within which it proposes to increase the number of AWCS so as to cover the 14 lakh habitations. We notice that the norm for supply of nutritious food worth rupee one for every child was fixed in the year 1991. The Government of India should consider the revision of the norm of rupee one and incorporate their suggestion in the affidavit.

In respect of sanctioned AWCS, we direct that the same shall be made fully operational by 30th June, 2004. We further direct that the

sanctioned AWCS shall supply nutritious food/supplement to the children, adolescent girls and to pregnant and lactating women under the scheme for 300 days in a year.

We direct the Chief Secretaries to file reports showing that for the period from 1st April, 2003 till 31st March, 2004 from the sanctioned AWCS how many children, adolescent girls and pregnant and lactating women were supplied nutritious food/supplement and for how many days during the said period. The report shall be filed by 31st July, 2004. List the matter in the month of August, 2004.

The question regarding Below Poverty Line Scheme will also be taken up on that day instead of July, 2004.

Not to be treated as part heard.

(S. Thapar)
PS to Registrar

(N. Annapurna)
Court Master

(V. P.Tyagi)
Court Master

# Reports of the Commissioners to the Supreme Court

# FIRST REPORT OF THE COMMISSIONER (DR. N. C. SAXENA)

**IN THE SUPREME COURT OF INDIA**
**ORIGINAL CIVIL WRIT JURISDICTION**
**WRIT PETITION © 196 OF 2001**

**IN THE MATTER OF**

PEOPLE'S UNION FOR CIVIL LIBERTIES — PETITIONER

VERSUS

UOI & ORS — RESPONDENTS

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| 3. | **ANNEX. B** Copy of letter dated 11.9.2002 from the Chief Minister of Rajasthan to the Hon'ble Prime Minister of India. |
| 4. | **ANNEX. C** Copy of letter dated 12.9.2002 from the Chief Minister Rajasthan to the Hon'ble Deputy Prime Minister of India. |


DR. N. C. SAXENA
COMMISSIONER

NEW DELHI
DATED: October 12, 2002

**IN THE SUPREME COURT OF INDIA**
**ORIGINAL CIVIL WRIT JURISDICTION**
**WRIT PETITION © 196 OF 2001**

**IN THE MATTER OF**

PEOPLE'S UNION FOR CIVIL LIBERTIES — PETITIONER

VERSUS

UOI & ORS — RESPONDENTS

**FIRST REPORT OF THE COMMISSIONER DR. N. C. SAXENA**

1. By order dated 8.5.02 this court directed:

> "Dr. N. C. Saxena, former Planning Secretary, Government of India, and Mr. S. R. Sankaran, former Secretary, Rural Development, Government of India, shall function as Commissioners of this Court for the purpose of looking into any grievance that may persist after the grievance resolution procedure has been exhausted.
>
> On the Commissioner's recommending a course of action to ensure compliance with this Court's order, the State Government/UT administrations, shall forthwith act upon such recommendation and report compliance.
>
> The Commissioners shall be at liberty to take the assistance of individuals and reliable organizations in the State and Union Territories. All officials are directed to fully cooperate with such persons/organizations, to bring about effective monitoring and implementation of the order of this Court."

2. Thereafter on behalf of two commissioners I addressed letters dated 16/07/2002 to all the states and union territories asking for information relating to compliance with the Hon'ble Supreme Courts order and the implementation of the various welfare schemes. I also wrote to various states with specific complaints on several occasions.

3. I also enquired as to whether the Hon'ble SC's order have been given publicity as directed by this court on Nov. 28, 2001 as under:

"We direct that a copy of this order be translated in regional languages and in English by the respective States/Union Territories and prominently displayed in all Gram Panchayats, Govt. School Buildings and Fair Price Shops.

In order to ensure transparency in selection of beneficiaries and their access to these Schemes, the Gram Panchayats will also display a list of all beneficiaries under the various Schemes. Copies of the Schemes and the list of beneficiaries shall be made available by the Gram Panchayats to members of public for inspection.

We direct Doordarshan and AIR to adequately publicise various Schemes and this Order. We direct the Chief Secretaries of each of the States and Union Territories to ensure compliance of this order. They will report compliance by filing affidavits in this Court within 8 weeks from today with copies to the Attorney General and counsel for the petitioner".

4. I asked for the above data as it was reported that many states had not complied with this part of the order.

5. I also pointed out that with the impending drought the hunger situation in the country is on the rise and that reports of starvation deaths have reached us from certain parts of the country. I asked the states to inform us as to what preparations were being taken to ensure that people do not starve.

6. I pointed out to many states that their off-take of grain was very low and that the list of the beneficiaries of the schemes were not being displayed as directed by this Hon'ble Supreme Court in order dated Nov. 28, 2001.

"The States are directed to complete the identification of BPL families, issuing of cards and commencement of distribution of 25 kgs. grain per family per month latest by 1st January, 2002."

7. I also communicated to the Chief Secretaries that information has been received that food grains were not reaching the fair price shops in time and that shop owners were distributing the grains only for three or four days in a month.

8. In order to carry out our various tasks we requested the respective State governments/UTs to appoint a nodal officer to liaise with the commissioners.

9. I had written to several states that they have not complied with the order relating to the implementation mid day meal scheme

> "We direct the State Governments/Union Territories to implement the Mid-Day Meal Scheme by providing every child in every Government and Government assisted Primary Schools with a prepared mid-day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days. Those Governments providing dry rations instead of cooked meals must within three months start providing cooked meals in all Govt. and Govt. aided Primary Schools in all half the Districts of the State (in order of poverty) and must within a further period of three months extend the provision of cooked meals to the remaining parts of the State".

**States/UTs responses not satisfactory**

10. I am sorry to report that the following States/UTs have either not replied to a single letter or have given replies of a very formal and general nature without providing the information asked for or with partial information:

**Names of states**:

| | | |
|---|---|---|
| Bihar | West Bengal | Jharkhand |
| Chattisgarh | Uttar Pradesh | Andhra Pradesh |
| Karnataka | Assam | |

Apart from state governments, Commissioners wrote letters to the Ministry of Food and Rural Development Ministry, seeking information on SGRY and other food schemes. Commissioners also requested both the ministries to assist them financially for monitoring the schemes. No response has been received.

**Scope of the commissioners work**

11. The order dated May 8, 2002 gives the impression that the commissioners work will commence only when the grievance procedure set out in the order has been exhausted. This is a limitation in the sense that it is possible for us to anticipate certain grievances of a general nature

and intervene at an early stage by monitoring the progress of the various schemes/initiatives. I therefore request this Hon'ble Court to consider an expansion in the scope of the commissioners' work to include monitoring as above mentioned.

**Assistants to the commissioners**

12. By order dated May 8, 2002 this court directed:

> "The Commissioners shall be at liberty to take the assistance of individuals and reliable organizations in the State and Union Territories. All officials are directed to fully cooperate with such persons/organizations, to bring about effective monitoring and implementation of the order of this Court".

13. After consultation with the reputed individuals and organisations, knowledgeable and active on the food security issue, I have prepared my first list of individuals/organisations to assist the commissioners in our work. They are:

Pushpendra Kumar
ActionAid India, Bihar
A/22 R.T. Tower
New Patna, Bihar - 744101

A K Roy
Hazards Centre, Munirka
Delhi, Delhi

Muthappa N M
Right to Food Campaign
No-44, New Bamboo Bazar
Bangalore, Karnataka

Abhay Shukla
CEHAT
3 & 4 Aman Terrace Pl. 140,
Dahanukar Cly, Kuthrud
Pune, Maharashtra

Anuradha Talwar
Paschim Banga Khet Mazdoor
Samiti, 324 Basunagar
Madhya Nagaram,
West Bengal

Biraj Patnaik
ActionAid India, Chattisgarh
HIG/ 28, Sec 1 Shankar Ngr
Raipur, Chattisgarh

Ramesh Sharan
Dept. of Economics, Ranchi University
Ranchi, Jharkhand

Mihir Shah
Secretary
Samaj Pragati Sahayog
Bagli, Madhya Pradesh

Bikash Das
CLAP
Bhubaneswar, Orissa

Sheeba Jose
Sadhana Sadan, 1 Tashkent Road
Allahabad, Uttar Pradesh

Pradeep Bhargawa
Institute of Development
Jaipur, Rajasthan

14. The role that I see assistants performing are:

a. Main roles of the assistants

- To send the Commissioners regular updates about the situation in the state
- To convey to the Commissioners any appeal for intervention that may be made in the state
- To work towards a more effective monitoring and redressal system within the state.

b. In addition, the assistants and their secretariat will assist in:

- An analysis of performance of relevant schemes using macro data
- Response to emergencies, like drought, starvation deaths etc
- Gathering information from the state governments on the per formance of the relevant schemes and programme.
- Articulating alternative demands regarding state policy especially on hunger
- Preparing periodic state reports
- Working towards accountability norms for public programmes related to food and food security
- Arranging visits of the commissioners if necessary
- Liase with local networks, individuals and organisations to gather information from the district level and other sub levels.
- Handle other requests that the commissioners may make to them from time to time.
- At the request of the commissioners, agree to be a part of various committees pertaining to the orders of the court, or organise suitable alternatives for the same.
- Liase constantly with the government on grievances and grievance redressal processes within the relevant schemes.

15. The Commissioners will work closely with the assistants and respond to the appeals received from different states through the adviser. The assistants will be in constant touch with government authorities, in particular with the nodal officer, over the issues cited above. For this purpose, the commissioners have requested state governments to appoint a nodal officer. The assistants will liase with this nodal officer on behalf of the commissioners. In case the state government does not appoints a nodal officer the Chief Secretary of that state will be the contact person.

16. Even though I have communicated these names to the various State governments/UTs the response has generally been lukewarm. I therefore request this Hon'ble Supreme Court to consider incorporating the names of these persons as assistants to the commissioners in an order of this court. Further, may I request permission to modify the list of assistants by adding or deleting persons.

17. It would help enormously if, when States and Union Territories have their meetings on food security, the commissioners and the assistants to the commissioners be invited to participate.

18. Also, the assistants should be permitted to access relevant data/ records.

**A cooperative approach**

19. We wish to emphasize that the approach of the commissioners is not fault finding. The States and Union Territories must take us as a friend and cooperate in a common endeavour to taken the issue of food insecurity.

**Starvation deaths during this petition**

20. I am sorry to report and I know that this news will greatly distress your lordships that despite your lordships' best endeavors and the full cooperation of the learned advocate general of India, starvation deaths have been reported once again from many States.

21. I now produce below in respect of starvation deaths in the country for the period after the starting of this case i.e April 2001. This is only a partial list as the details are still coming in.

| | | |
|---|---|---|
| a) 4 starvation deaths were reported and were also documented by a team from "Gram Swaraj Abhiyan" and "Delhi School of economics" | Manatu, Jharkhand | Pioneer, Dt. 23.7.02 |
| b) 10 people die after eating rotten food not able to afford edible food | Raygada, Kashipur Block, Orissa | Hindustan Times 27.8.02 |

| | | |
|---|---|---|
| c) Mewa belonging to a large family died on April 28th when the family driedout of food. The help from government was meager and did not help | Kotada Thesil, Udaipur District, Rajasthan | Indian Express, 6.5.02 |
| d) About sixty have died out of malnutrition. | Kisanganj, Rajasthan | Dainik Navijothi 10.10.02 |
| e) Atleast two adult deaths due to starvation and three more where starvation or undernutrition is the cause of death | Barwani, Madhya Pradesh | Documented in detail by Dr. Abhay Shukla, CEHAT |

---

**Baran District, Rajasthan**

- In Kishan Ganj Sub Division, Baran district, twelve children died out of hunger and malnutrition. The news report states that in village Swaans, of the sub division about twelve children belonging to the Sahariya tribe died in the week. The patwari of the area reported the matter to the tehsildar according to the correspondent. Works in the village are completely inadequate that people are dying of hunger (Source: 10th October, 2002 Dainik Navjyoti, regional Hindi newspaper).

- In village Gangapur shaherana, Mundiar panchayat, Shahbad tehsil, according to the activists of Sankalp organisation, based in village Mamoni, Sahabad tehsil, one Ganpat Sahariya, his daughter-in-law and her two children died after eating poisonous *phang* (a vegetation that turns poisonous if does not receive the required rain) as there was no cereal to eat or money to buy it. The incident happened fifteen days ago. This information was sent to the PUCL by letter from the organisation.

- Activists of Sankalp organisation, gave in writing to the Chief Minister on the 27th of September that in ***Lal Kankri village of Kishanganj tehsil*** one sahariya tribal male died in public a week earlier, after acute pain in his stomach. He had not had anything to

eat for many days as he had no money and employment. The memorandum states that the people are surviving after eating *phang and sama (local greens).* In village ***Kaglavar of Shahbad*** tehsil people ate some local greens and most of the villagers fell ill (This is from the memorandum. It does not have specific information. We plan to do a study of this).

Sahariyas, supposed to be the most primitive tribe of Rajasthan, are the worst hit people who live in chronic hunger even in non drought periods. In the present drought with no livelihood base left in the region they need a special focus by the Government otherwise there may be several deaths in the region.

**Kota District (Rajasthan Patrika, 7th October)**

A middle aged man died of starvation in the railway colony thana area of Kota city. According to the post mortem carried out on the 4th of October the person had not eaten any food for four-five days.

**Pali District (Rajasthan Patrika, 5th October)**

Chaana Ram Chowkidar of Khariyaneeva village near SOJAT died of hunger at the famine work site of the village. According to his wife, the family did not have money to buy food and as such Chenaram was a victim of hunger.

**Churu District (Bhaskar, 28th September)**

According to this news report one 32 year old Om Singh from Dhingrala village Churu district took his life on 23rd September as he did not get work in his village due to drought conditions. He took his life in Hissar (Haryana) where he went looking for work and was unable to find work there too.

**Sirohi, Revdar Tehsil**

According to BrijMohan of Society of all round Development a voluntary agency working in the region, one adivasi died in early August. The post mortem report stated that he had not eaten for four days although he was a TB patient.

## OFFTAKE BEFORE AND DURING THIS CASE

22. Though we have made historic gains in this case, the study of the off-take during the year preceding the case i.e. 2000-01 and the off take during the pendency of the case 2001-02 for all the welfare schemes is only about 6 MT which shows that there is something holding back real progress. The off take during these two periods is as under:

**OFFTAKE OF FOODGRAINS FROM THE CENTRAL POOL (2000-1 and 2001-2) — Lakh Tonnes**

| | 2000-2001 | 2001-2002 |
|---|---|---|
| BPL | **95.21** | **100.44** |
| APL/additional | **21.57** | **21.06** |
| Antyodaya | **0.35** | **16.79** |
| Annapurna | **0** | **0.93** |
| SGRY | **0** | **18.83** |
| Nutrition prog. | **17.79** | **1.36** |
| FFW | **0** | **28.37** |
| Mid-day meal | **15.19** | **20.76** |
| Other | **0** | **1.58** |
| **TOTAL** | **150.11** | **210.12** |

## FOOD FOR WORK

23. Obviously further steps need to be taken and may I humbly suggest that the major step that may now required to be taken in respect of food for work.

24. I have worked done food security issues for many years. I was the Relief Commissioner (U.P.) during the drought of 1979-1980, Food Secretary (U.P.) 1981-1982, Rural Development Secretary (Government of India) 1997-1999, and have taught Food Security issues at Mussoorie from 1976-1980 and 1993-1996.

25. After all my years of public service I have come to the conclusion that only an effective food for work programme can reduce hunger and move our nation towards food security. I have read the application filed now in this court for directions by the petitioner and I am in broad agreement with them, and the comments that follow are in addition to what is contained in that application.

26. I have seen the response of the Union of India submitted to the petitioners on 4.10.02 and would like to make certain submissions.

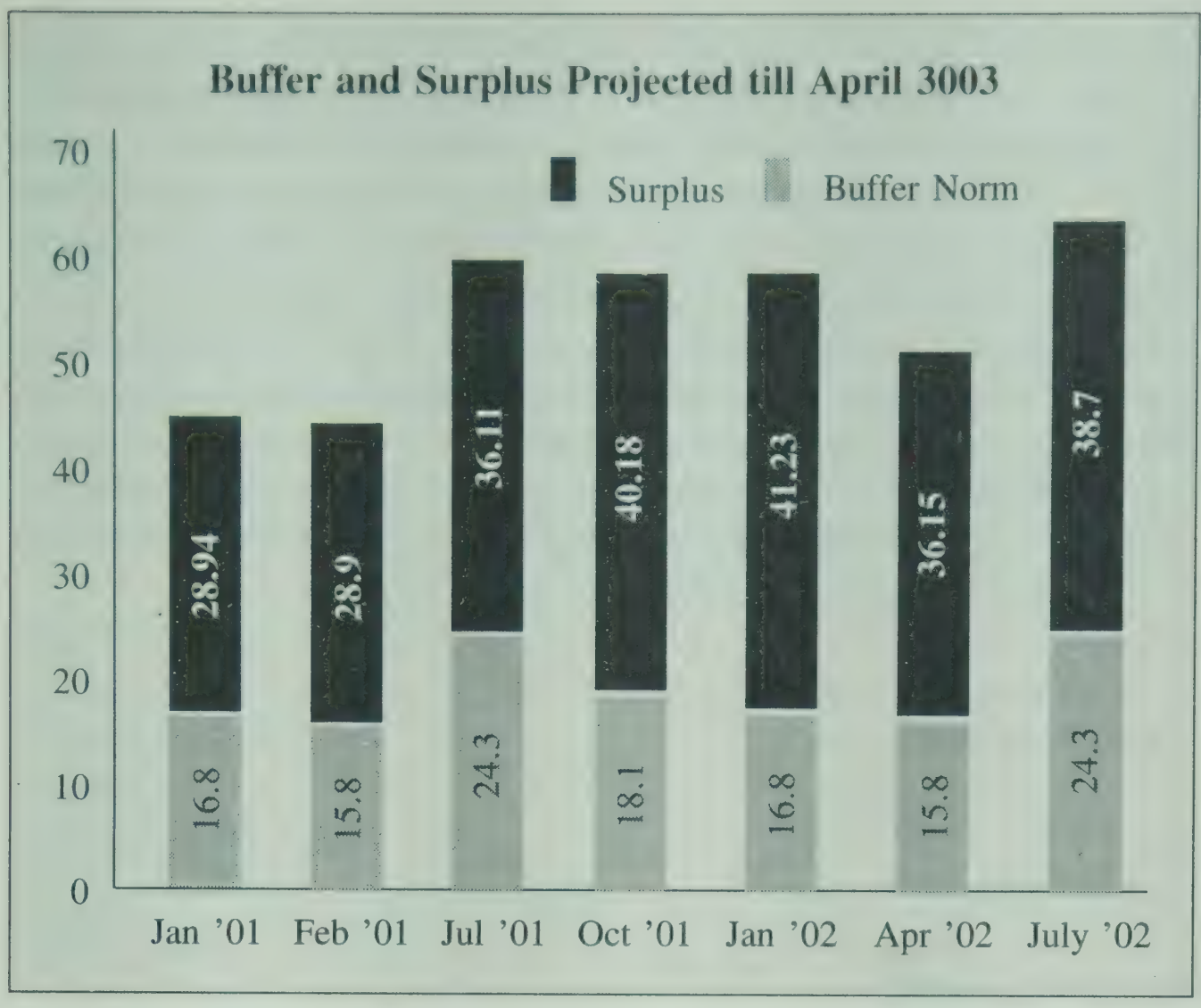
27. The procurement during the period April 2002 to July 2002 as obtained from the union of India website is 19 million tonnes of wheat. This is the rabi crop for which procurement starts around the 1st April. My information is that government expects the rabi procurement to be minimum 20 million tonnes. The figures after July 2002 are yet not available, but this is the expectation.

| **Year** | **Wheat (April-March)** | **Rice (Oct-Sept)** |
|---|---|---|
| 1997-1998 | 92.98 | 143.32 |
| 1998-1999 | 126.52 | 117.89 |
| 1999-2000 | 141.43 | 172.74 |
| 2000-2001 | 163.55 | 191.03 |
| 2001-2002 | 206.30 | 206.30 |
| 2002-2003 | 190.19 | |

***As on 31.07.2002***

28. The information that I have received in respect of government expectation of the minimum procurement of Kharif crop for which procurement has started on the 1st October is 16 million tonnes. Thus the total procurement for the year 2002-02 a minimum of 36 million tonnes. Thus the drought in the country is expected to have a marginal effect on procurement. Moreover the main states from which procurement taken place Punjab, Haryana, UP and Andhra Pradesh have not been particularly affected by the drought.

29. I have set out the chart (next page) showing the fluctuation in the buffer stock norms and the interplay between the procurement and the off-take resulting in a fluctuating surplus.




30. It has also been reported particular from Rajasthan and Madhya Pradesh that persons have been working on the Food-for-Work programmes and have not been paid for works sometimes months as the grain under SGRY was not available. These reports highlight the urgent need to immediately release adequate quantities of free grain on time and the state for the FFW programme.

31. In this context I reproduce below extracts of the correspondence between the Chief Minister Rajasthan and the Centre:

**(i)**

CHIEF MINISTER
RAJASTHAN
D. O. No. F.1 (2)( ) SA/FFW/2002/15752
Dated: 2.8.2002

Dear Shri Shanta Kumar ji
As you are aware the Monsoon has failed completely in Rajasthan and the State is facing the 5th successive drought. All the 32 districts of the State have already been declared scarcity affected. Even last year, when most of the country had good rains, in Rajasthan we had to declare

scarcity conditions in about 8,000 villages in 18 districts. In the current year, the complete failure of the Kharif crops sown, which is caused by the previous four consecutive years of drought, have created a major crises of employment for the landless labour, small and marginal farmers and other poor sections of the society, especially BPL families. In these circumstances employment generation works under Food for Work Programme will have to be started on massive scale. The availability of wheat for the programme has been stopped with effect from 31st March, 2002. It is obvious that Government of India will have to resume the supplies early so that our employment generation programme does not suffer. The Food for Work programmes is now required to be launched in a big way to sustain our affected agriculturist.

With regards,
Yours Sincerely,

Sd/-
(Ashok Gehlot)

Shri Shanti Kumar
Union Minister for Rural Development,
Government of India,
NEW DELHI.

**(ii)**

CHIEF MINISTER
RAJASTHAN
D. O. No. F.1 (2)( ) SA/FFW/2002/
Dated: August 13, 2002

Dear Shri Ajit Singh ji
Among other things the State is requesting for the immediate launch of Food for Work programme by the Central Government. However, the Central Government is yet to announce the commencement of the Food for Work programme. We intend to start employment generation relief works by the 15th of August, 2002. Hence it us most necessary that the food grains are allotted immediately.

In the end, I would again urge you to launch the Food for Work Programme immediately so that employment opportunities in drought affected areas can be made available to affected populations.

With regards,
Yours Sincerely,

Sd/-
(Ashok Gehlot)

Shri Ajit Singh
Union Minister for Agricultural,
Government of India,
NEW DELHI.

**(iii)**

CHIEF MINISTER
RAJASTHAN
ASHOK GEHLOT
D. O. No. F.1 (2)( ) SA/FFW/2002/
Dated: August 15, 2002

Dear Shri Shanta Kumar ji,
This measure immediately requires the allocation of wheat under the Food for Work Programme, failing which it will not be possible to make payment to the persons employed. We have decided that we shall be making payment in the front of wheat to the extent of 75% and the rest as cash. I am enclosing a statement of the requirement of wheat in the months ahead. This letter is in request you to immediately issue directions for the release of our immediate requirement so that there will be no delay in making payment to the labour now engaged on relief works. The payment of wages to these labours is to be made in the first week of September, 2002. Any delay will seriously hamper our efforts and cause avoidable hardships to the people of the state.

With regards,
Yours Sincerely,

Sd/-
(Ashok Gehlot)

Shri Shanta Kumar
Union Minister, Ministry of Rural Development,
Government of India, Krishi Bhavan,
NEW DELHI.

**(iv)**

CHIEF MINISTER
RAJASTHAN
D. O. No. F.2 (62) Rd/02/21373
Dated: August 27, 2002

Dear Shri Vajpayee ji

1. Kindly refer to my earlier letter to 20th August, 2002 in which I urged you to take necessary steps for immediate release of food grains for payment to labour employed on drought relief works in the State which have commended from 16th August, 2002. At present the sanctioned labour strength is in the order of 4.18 lacs and in due course of time we intend to take this to about 30 lacs in the peak summer months.

2. The Government intends to release 75% wage component in the form of food grains and the projected demand for the entire drought period up to the end of July 2003 is estimated to be 56 lac tones. Government of India has taken a view that surplus food grains under SGRY still available with the State Government should be first substantially lifted before further allocation of food grain is made. State Government is making adequate arrangements to ensure the same. I would like to bring to your notice that under SGRY only 48000 MT wheat is available against our requirement of 1.04 lac MT for the month of August, 2002. I am sure that Government of India will take steps to release the required wheat immediately.

3. I would like to point out that the SGRY is the scheme that was announced by you on 15th August, 2001 and that it has taken almost a year for it to be actually implemented on the ground. The guidelines of SGRY itself is made applicable only from 1.4.2002. Further, the guidelines were received in the State Government only few days ago and that too when a request to this effect was made by the State Government officers. It is also necessary to point out that allocation of cash./wheat was made to the State in the second half of June 2002. Hence to demand that this amount is utilized early within such a short time is not reasonable. This should not become a point of debate between Government of India and State Government in mater regarding utilization of resources already available with the State Government.

4. In this letter, I wish to draw your attention to the guidelines issued under SGRY for Special Component for the purpose of augmenting food security through additional wage employment in calamity affected

rural areas. It is understood that food grain under special component can be used in any scheme of the State Government being implemented for generation of employment in areas affected by natural calamity. However, the procedure for release of such food grains is cumbersome and centralized. The guidelines state that Ministry of Agriculture will obtain district-wise proposal from the State Government and that such proposals shall be scrutinized before recommending the quantity of food grains to be released through the Department of Rural Development. Thereafter, Department of Rural Development will authorize the Department of Food and Public Distribution for releasing food grains district wise. Yet again, before any additional demand for food grains is entertained, a certificate will have to be issued that 75% of the released food grain has been lifted and that 60% of the lifted food grain has been utilized.

5. I am of the view that these formalities can be avoided because the current situation is extremely is extraordinary and such procedures have to be avoided if the works are to be executed with full speed so as to ensure timely payment of wages to the persons employed on such works. I would suggest that the quarterly requirement of food grain as presented in our interim memorandum be released periodically and that before release of the next quarter's installment, a certificate from the State Government can be obtained regarding utilization. This will obviate the need for district-wise release of food grains and will ensure that there is no delay in release of food grains to the labour employed on the employment generation work.

6. It is also necessary to point out that the present allocation of SGRY of Rs.300 crores (both cash and wheat) is grossly inadequate and this amount is required to be raised to Rs.600 crores (6% of the yearly allocation of Rs.10,000 crores) in view of the magnitude of the scarcity conditions of the State. As and when the funds are utilized, we shall approach you once again for making additional allocation.

7. It is also a fact that wheat being released through FCI godowns is being calculated on the economic cost which would be of labour Rs.10 per kg. while the State Government has been given the discretion to charge any amount between BPL rates and APL rates. Considering the present situation of distress, the State Government will be releasing the wheat as labour payment on rates equivalent to BPL rates. This wide disparity between issue price of wheat and labour payment rates, is required to be considered especially in view of accounting procedures so that there is no confusion in future.

8. At present the relief operations are being undertaken only in rural areas. It is a fact that even in small municipalities as well as bigger towns, the effect of deprivation is keenly felt in the same intensity as in rural areas. As a special case, the Government of India should consider extending the SGRY to municipal areas also if the State Government feels the necessity to start relief operations in these places also.

9. In the last drought of 2001-2001, we had ensured payment to the labour within 7-10 days after the lapse of the preceding fortnight. This generated confidence in the employed labour and the high credibility of the Government. This time also we intend to ensure that there is no unnecessary delay. I am sure that you will issue appropriate directions to ensure that the procedural formalities are avoided at a time when the main trust of the Government is to provide instant relief to the drought affected population.

Yours Sincerely,

Sd/-
(Ashok Gehlot)

Shri Atal Behari Vajpayee,
Prime Minister of India,
New Delhi.

Copy to :
1. Chief Secretary
2. Secretary, Relief
3. Secretary, Rural Development.

Sd/-
Secretary (1) to CM

(v)

GOVERNMENT OF RAJASTHAN
RELIEF DEPARTMENT

No.F.1(2)( )RC/FFW/2002/15957-58 Jaipur dated 6-8-02

Shri Wilfred Lakra
Joint Secretary (SGRY)
Ministry of Rural Development
Government of India, Krishi Bhawan
New Delhi.

Sub: Allocation of foodgrains free of cost for generating additional employment.

Government of Rajasthan has submitted an interim Memorandum demanding funds and food grains to Ministry of Agriculture & Cooperation, Government of India vide letter No.F1((1)(2)RC/Gen/2002 dated 03.8.2002. In this Memorandum, the State Government has demanded 56 lac MT of wheat and a sum of Rs. 3276 Crores as cash component for payment of part wages and material. This demand has been calculated on the basis of following criteria:

1. Employment generation will be made from the month of Aug., 2002 to July, 2003 in 41000 villages of all the 32 districts of the State, which have been notified as scarcity affected.

2. Although, there are 23 lacs identified BPL families in the State but the anticipated labour employment has been assessed from 5 lacs labour in the month of Aug. with a gradual increase in next months. The monthwise details of labour is to be engaged is being given in Annex.I where a total number of employment to be generated has been calculated to be 5660 Nos.

3. Keeping in view the labour material ratio as 64:40, the requirement of funds will be to the tune of Rs. 5600 Crores. This has been calculated as per prevalent minimum wages notified Rs. 60 per day in the State.

4. One of the total requirement of funds, 60% labour component comes out to Rs. 3360 Crores. State Government proposes to pay the part wages in the form of foodgrains @ 10 KG per day at BPL price of

Rs. 4.15 per kg. With this strategy the total requirement of foodgrains (wheat) will be 36 lacs MT costing Rs. 2324 Crores and the remaining cash component of wages would be Rs. 1036 Crores, Besides this, the requirement of material with the ratio of 60.40 will be Rs. 2240 Crores. Month wise break-up of the requirement of funds and food grains is being enclosed.

5. Cash component of the wages and material cost for the relief words is to be provided by Government of India from NCCF or other sources.

6. The works to be undertaken will result in creation of permanent community assets of harvesting and conservation the water to increase productivity of soil, minor irrigation works, assets required for social needs like education, medical & health, sanitation, drinking water, dwelling units for rural poor etc. It is worth mentioning here that Rajasthan has an appreciable and exemplary instance of executing the Food for Work programme in the year 1999-2000 (Samvat 2057) where the relief funds were used for creating permanent community assets by giving the slogan "Akal se Vikas".

With the submission of above details, it is requested that 56 lac MT of wheat free of cost may be allocated alongwith the cash component of Rs. 3276 Crores for generating additional employment opportunities in the scarcity affected areas during the drought period of Aug. 2002 to July 2003.

Yours faithfully,
Sd/-
(O. P. MEENA)
Secretary to the Government

Encl: A/a

Copy To the Director (DM), Ministry of Agriculture, Department of Agriculture and Cooperation, Government of India, New Deli in reference to their letter No.30-11/2002, DM dated 29.7.2002 for necessary action.

2. Principal Resident Commissioner, New Delhi.

Sd/-
Secretary to the Government

32. I have annexed at **Annexure A, B and C** respectively list of the letters written by the State of Rajasthan to Government of India and the letter dated 11.9.2002 from the Chief Minister of Rajasthan to the Hon'ble Prime Minister of India and the letter dated 12.9.2002 from the Chief Minister Rajasthan to the Hon'ble Deputy Prime Minister of India.

33. As can be seen the surplus last year, is about 40 MT and the surplus this year is expected to be to the tune of about 35 million tonnes above the buffer stocks even if one assumes that on account of the drought situation, procurement will be less.

34. This figure of 35 MT is on the low side because government expects to export 10 million tones this year very marginally above the BPL rates. It is regrettable that the government subsidizes the sale of food grains to countries abroad while at the same time starvation deaths take place in the country.

35. In view of the charts above, I believe that there is a clear case made out for the directions as sought for by the petitioner for 20 million tonnes of grain to be given free to the states specifically for use in the food for work programmes.

**To sum up may I request for the following directions:**

a) The Chief Secretaries/Administrators of all the states/UT's may be directed to respond promptly to all the correspondence addressed to them by the Commissioners and provide full information as required.

b) Though the Commissioners have clarified that they do not see their role as fault finding nevertheless it may be directed that in the case of persistent defaults in complying with the orders of this Court the Chief Secretaries/Administrators shall be held responsible in Contempt of Court.

c) Since it is reported that many states/UT's have not complied with the order of this Court to translate and prominently display the Court orders on all Gram Panchayat's, school buildings and fair price shops and that wide publicity was not done on AIR and Doordarshan as directed, the Chief Secretaries/Administrators may be given one last chance to comply with this order within 8 weeks.

d) It may be clarified that the scope of the Commissioners work will include monitoring of the implementation of the Court orders and the implementation by the respondent of the various welfare measures.

e) The following persons are appointed as assistants to the Commissioners:

Pushpendra Kumar
ActionAid India, Bihar
A/22 R.T. Tower New
Patna, Bihar - 744101

A K Roy
Hazards Centre
Munirka
Delhi, Delhi

Muthappa N M
Right to Food Campaign
No- 44, New Bamboo Bazar
Bangalore, Karnatak

Abhay Shukla
CEHAT
3 & 4 Aman Terrace Pl. 140,
Dahanukar Cly, Kuthrud
Pune, Maharashtra

Pradeep Bhargawa
Institute of Development
Jaipur, Rajasthan

Anuradha Talwar
Paschim Banga Khet Mazdoor
Samiti
324 Basunagar
Madhya Nagaram, W. Bengal

Biraj Patnaik
ActionAid India, Chattisgarh
HIG/ 28, Sec 1 Shankar Ngr
Raipur, Chattisgarh

Ramesh Sharan
Dept. of Economics, Ranchi
University
Ranchi, Jharkhand

Mihir Shah
Secretary
Samaj Pragati Sahayog
Bagli, Madhya Pradesh

Bikash Das
CLAP
Bhubaneswar
Orissa

Sheeba Jose
Sadhana Sadan
1 Tashkent Road
Allahabad, Uttar Pradesh

f) The assistant shall play the following role:

- To send the Commissioners regular updates about the situation in the state
- To convey to the Commissioners any appeal for intervention that may be made in the state
- To work towards a more effective monitoring and redressal system within the state.

**In addition, the assistants and their secretariat will also assist in**

- An analysis of performance of relevant schemes using macro data;
- Response to emergencies, like drought, starvation deaths etc
- Gathering information from the state governments on the performance of the relevant schemes and programme.
- Articulating alternative demands regarding state policy especially on hunger
- Preparing periodic state reports
- Working towards accountability norms for public programmes related to food and food security
- Arranging visits of the commissioners if necessary
- Liase with local networks, individuals and organisations to gather information from the district level and other sub-levels.
- Handle other requests that the commissioners may make to them from time to time.
- At the request of the commissioners, agree to be a part of various committees pertaining to the orders of the court, or organise suitable alternatives for the same.
- Liase constantly with the government on grievances and grievance redressal processes within the relevant schemes.

g) The respondents shall appoint a nodal officer in every state for the implementation of the Court orders. The assistants will be in consistent touch with the nodal officers. In case no nodal officer is appointed the Chief Secretary/Administrator shall be the nodal officer.

h) The nodal officers shall provide the assistants full access to relevant records and provide all relevant information. On receiving information from the assistants regarding non compliance the nodal officer shall act swiftly to correct the situation.

i) When the respondents have their meetings on food security it is necessary that the Commissioners and their assistants be also invited to participate.

j) It is clarified that the Commissioner is at liberty to modify the list of assistant by adding or deleting names and the modified list as submitted to the respondents shall be taken as if authorised by this Court itself.

k) It is reported that starvation deaths have taken place during the pendency of this case despite all the court orders. It is clarified that it is

the duty of each respondent to prevent starvation deaths. If the Commissioner reports that starvation deaths have taken place it will be presumed that Court orders have not been implemented and the Chief Secretary/Administrator of state/UT's will be held responsible.

l) The Commissioner's have submitted to Government a proposal for financial assistance for the work of the Commissioner including, inter alia, travel, research, secretarial assistance, computers and so on. The Government of India may be directed to approve of that proposal and sanctioned the amounts immediately.

DR. N. C. SAXENA
COMMISSIONER

NEW DELHI
DATED: October 12, 2002

# ANNEXURE - A

| S.NO. DATE 2002 | TO | FROM | |
|---|---|---|---|
| 01. | L.K. Advani, Home Minister, GOI | C.M. of Rajasthan | 12 September |
| 02. | A. B. Vajpayee, Prime Minister, GOI | C.M. of Rajasthan | 11 September |
| 03. | R. D. Kapoor, Secretary, Dept. of Food and Public Distribution | Inderjeet Khanna, CS | 28, August |
| 04. | A. B. Vajpayee, Prime Minister, GOI | C.M. of Rajasthan | 27, August |
| 05. | A. B. Vajpayee, Prime Minister, GOI | C.M. of Rajasthan | 20, August |
| 06. | R.D. Kapoor, Secretary, Dept. of Food and Public Distribution. | Inderjeet Khanna | 19, August |
| 07. | Shanta Kumar, Minister Rural Development. | C.M. of Rajasthan | 15, August |
| 08. | Ajit Singh, Minister of Agriculture, GOI | C.M. of Rajasthan | 13, August |
| 09. | T. R. Prasad, Cabinet Secretary, GOI | Inderjeet Khanna, CS, GOR | 12, August |
| 10. | Wilfred Lakra, Jt. Secretary, GOI | O. P. Meena, Secretary | 06, August |
| 11. | A.B. Vajpayee, Prime Minister, GOI | C.M. of Rajasthan | 02, August |
| 12. | Shanta Kumar, Minister Rural Development. | C.M. of Rajasthan | 02, August |

List of Letters sent to GOI by GOR for the release of grain for relief work.

# ANNEXURE - B

National Emblem

CHIEF MINISTER
RAJASTHAN

**MOST URGENT**

*Correspondence Filing Details*
Jaipur, Dated 11th Sept., 2002

Dear Sri Vajpayeeji,

Please take a look at my previous letter dated 27th Aug., 2002, wherein I had invited your attention to the problems related to the grain allotted under the special provisions of Sampoorna Gramin Rozgar Yojana (SGRY) for drought relief work.

You would recall that I met you on 5.8.2002 in a delegation, headed by the Congress President Srimati Sonia Gandhi, of the Chief Minister of Congress ruled states. In that meeting I invited your attention to the procedural complications we faced in previous years with various ministries of the Government of India in regard to the Food for Work Scheme. I had similar apprehensions this year too and with that in mind I wrote a letter to you 27.8.2002. I am proving right in my apprehensions as despite all possible efforts during the past two months, Rajasthan has been unable to receive any grain allotment under the Food for Work Scheme.

In meeting between the Central Agriculture Minister and the Agriculture and Relief Ministers of the States on 24.7.2002, it was decided that the central government would make free grain available under the Food for Work Scheme for the regions declared drought affected. In keeping with this and with severe drought conditions in the state in mind, we submitted an interim memorandum to the Central Government on 3, August 2002 for an assistance of 6115 crore rupees, which also included a demand for an allotment of 56 lacs metric tones of wheat. Subsequently, I requested you and other central ministers for quick allotment of grain from time to time through the following letters;

1. Letter dated 21.8.2002 to Sh. Shanta Kumar, Union Minister of Rural Development.

2. Letter from Chief Secretary Rajasthan, dated 12,08,2002, to the Cabinet Secretary.

3. Letter dated 1.8.2003 to Sh. Ajit singh, Union Agriculture Minister, GOI.

4. Letter dated 15.8.2002, to Sh. Shanta Kumar, Union Minister for Rural Development.

5. Two letters to you dated 28.08.2002 and 27.08.2002

Subsequently, the Relief and Finance Minister of the State met the Union Finance Minister on 31.08.2002, inviting his attention to the severe drought condition in the State and requesting for an immediate allotment of 2 lac metric tones of wheat, the Union Finance Minister, who had paid a visit to the drought affected districts of Rajasthan, directed the officials present in the meeting to ensure an allotment of 2 lac metric tones of wheat to Rajasthan.

Following these directions, the Minister officials of the Ministry of Rural Development were approached but they refused to allot any grain without the instructions of the task force.

Considering that the this was the fifth year of drought, we had begun drought relief works in right earnest from the 16.08.2002. The payment to the workers for the fortnight in August is now due since the first week of this month. We have repeatedly requested the rural development ministry that the 63,000 metric tones of wheat under SGRY does not meet our requirements which is above 63,000 metric tones when we take the number of workers employed in the month of August alone. But when no action was taken also on this letter then I met the honorable deputy prime Minister on 5.09.2002 and drew his attention to all the facts of the matter. He gave immediate instructions to hold the meeting of the task of the matter. He gave immediate instructions to hold the meeting of the task force on 9.9.2002. In this connection I also met the Union Food Minister and the Union Rural Development Minister and requested them to allot grain soon. But due to some reason the task force could not meet on 9.09.2002. Consequently the workers have not been paid their wage in wheat for the month of August. In Barmer Bikaner and Dungarpur districts wheat is not even available under the SGRY. These districts have been severely affected by drought. You will agree that if the prescribed norms of the GOI fail to provide quick relief under such circumstances then it would be extremely diffi-

cult for us to combat these severe conditions. The central rural development ministry has prescribed such procedures under the special provisions of the SGRY that they are not only complicated but also take a lot of time to implement. In my letter addressed dated 27.8.2002 I had sent detailed suggestions for the amendment in these procedures.

To combat this severe conditions of drought, I had requested you to lay down a system at the level of the GOI which would ensure quick assistance to the Status from the GOI. This would enable the States to attend the hardships of the people. I have no hesitation in saying that at present most of our energy is spent on obtaining assistance from the Central Government.

I shall be grateful if you take a quick decision in this connection.

With best wishes.

Sd/ illigible
**Ashok Gehlot**

Sh. Atal Behari Vajpayee,
Prime Minister,
Government of India,
New Delhi.

# ANNEXURE - C

National Emblem

CHIEF MINISTER
RAJASTHAN
*Correspondence Filing Details*
Jaipur, Dated 12th Sept., 2002

Dear Sh. Advani Sahab,

I met you in Delhi on 6th September,2002 and invited your attention to the severity and extent of the drought prevailing in the State. I requested you to immediately allot 2 lac metric tonnes of wheat for the partial payment of wages to the workers employed on relief works. In an immediate action you instructed Sh. Shanta Kumar, Union Rural Development Minister on telephone to expedite the decisions by his ministry on 2 lac metric tonnes of wheat which the Union Finance Minister had instructed to allot. A decision was also taken on the occasion to hold a meeting of the task force headed by you on 9.09.2002. Due to some reasons, this meeting of the task force was held yesterday on 11.09.2002 instead of 9.09.2002. We learnt from the newspapers that the no decision was taken in this respect in the Delhi meeting of the task force on calamity management, headed by you. The meeting decided that a committee of secretaries would asses the grain requirement of the drought affected State by the end of the month. It also decided that any decision on providing assistance would be taken only after the central study team submits its report after the completing its tours of the States. It seems by all this that a decision on providing relief to the affected people has been postponed to the end of the month. This is extremely unfortunate and a matter of grave concern. This will lead to a dissatisfaction among the people of the State.

As I have made known to you, the severity of the current drought in the State is even more than that of the 1987-88 drought. The honorable finance minister of the GOI has himself toured the State and got a first hand account of the situation. Even he considers it serious. There is a great deal of pressure on the Government to increase the numbers of relief works. So much so that Sh. Devi Singh Bhatti an MLA of your party went on an indefinite fast in Bikaner demanding an increase in the quantum of relief works. I got his fast lifted by assuring to consider his demands and increase the number of workers employed in the next fortnight.

I would like you to recall that in 1987 the Central Government had provided advance assistance to the State Government's to combat drought without waiting for a report by the central study team. Moreover, different departments of the central government on their own initiative prepared and implemented action plans to assist the States. A detailed report of this is available with the Union Agriculture ministry and you can take a look at it if you want. With Rajasthan not receiving an immediate grain allotment even in the meeting in the task force headed by you, the workers employed on the relief works in the month of August face a crisis with regard to payment of wages. I have repeatedly requested the ministry of rural development that the wheat under Sampoorna Gramin Rozgar Yojana fall far short of our requirement. Hence we require 2 lac metric tonnes of wheat immediately. Currently 4.80 lacs workers are employed on relief works whereas 4.18 lac workers were employed in August, 2002. Only 63 thousand metric tonnes of wheat is available under SGRY which is insufficient for payment to these workers.

You have come to Rajasthan and I welcome you here. I wanted to meet you again and repeat my request but since you have come for important party work I did not deem it fit to intrude on your schedule. That is why I am having this letter sent across to you so that you may take immediate action to provide immediate relief to the people of Rajasthan reeling under the severity of the drought and oblige us by instructing the rural development ministry to immediately allot 2 lac metric tonnes of wheat.

I had sent you a separate letter. I would be obliged if you find time.

Respectfully,

With best wishes,

Sd/- illegible

Ashok Gehlot

Sh. Lal Krishna Advani,
Home Minister,
GOI, New Delhi.

# SECOND REPORT OF THE COMMISSIONER

# (DR. N. C. SAXENA)

## SECOND REPORT OF THE COMMISSIONER

## TO THE SUPREME COURT

The commissioner to the Supreme Court of India in "PUCL Vs UoI and Others" submitted his second report on March 3, 2003 to the court. The following is the original text of the report. The annexures will be available soon as a public document and has been released by Dr. Saxena.

## SECOND REPORT OF DR N. C. SAXENA
## TO THE SUPREME COURT

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## STRUCTURE OF THE REPORT

1. INTRODUCTION AND REPORT OF ACTIVITIES

2. STATUS OF IMPLEMENTATION OF VARIOUS SCHEMES

   i) Mid-day meal scheme

   ii) SGRY

   iii) Targeted Public Distribution Scheme

   iv) Annapurna and Pension Schemes

   v) Other issues

3. PRAYERS AND RECOMMENDATIONS

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The Hon'ble Chief Justice
Supreme Court of India
Tilak Marg, New Delhi-110 001

**Re:** WRIT PETITION (CIVIL) NO. 196 OF 2001

PEOPLE'S UNION FOR CIVIL LIBERTIES VS UNION OF INDIA & ORS.

**SECOND REPORT TO THIS HON'BLE COURT OF DR. N. C. SAXENA**

Dear Sir,
This Hon'ble Court by its order dated May 8, 2001 was gracious enough to appoint me and Mr. S. R. Sankaran as the commissioners of this Hon'ble Court for the purpose of looking into the grievances that may persist after grievance resolution procedure laid down by this Hon'ble Court have been exhausted. I have already forwarded my first report to this Hon'ble Court. Following is the second report for the perusal and kind attention of this Hon'ble Court.

## PART I: INTRODUCTION AND REPORT OF ACTIVITIES

In the past few months I have been building a steady volume of correspondence with the states on various issues pertaining to implementation of the orders of the Hon'ble Supreme Court. Unlike the time during the previous report, most of the States and Union Territories are now responding more promptly to my queries. This has enabled me to build a better understanding of the status of implementation of the orders in PUCL Vs UoI and Ors.

Apart from corresponding with the States, I have also made personal visits to many places to make first hand assessment of the situation. The reports of my visits to Orissa, Maharashtra and Uttar Pradesh are annexed and marked **Annexures A, B & C** respectively. I am happy to note that as per the order of October 8, 2002 I have received funds for operation from the Ministry of Rural Development. Following the same order, I requested the States and Union Territories to appoint the resident commissioner of each state to perform the task of assisting the commissioner. Most of the States and Union Territories have appointed either the resident commissioner or some other IAS officer with suitable experience. Some States have given me other alternatives.

The Hon'ble Supreme Court has rightly been giving a lot of importance to the mid-day meal scheme. The scheme reaches an important target group and the effectiveness of cooked mid-day meal programme is well

established. The Court had asked all the States and Union Territories to introduce cooked mid-day meals in all government and government aided schools latest by May 28, 2002. This order has unfortunately been violated by many States.

I have been regularly corresponding with the States and have urged them to introduce cooked mid-day meal programme at the earliest. I have also constantly reminded those in violation of the order of November 28, 2001. Many states have shown a positive response by starting the programme with full or partial coverage. Some states, in particular Bihar, Uttar Pradesh and Jharkhand have still been unable to start the scheme in any part of the State at all. Given the importance of the mid-day meal programme, I have a detailed section on it in this report. A communication was sent to the States and Union Territories regarding the impending report telling them what I know of the status of implementation in their state. I have taken into account the views of the States where I have received a response.

Employment programmes are the best way for reaching the poorest people. Proper and adequate implementation of relief employment is crucial in times of drought for avoiding mass hunger and distress. My field visits and reports from various states confirm that there is a distress situation due to drought in many states. There have already been many reports of Starvation Deaths from various corners. The distress is only bound to increase in the coming months and will go on at least till the month of August-September, until the next harvest is done. It is imperative that drought relief is carried out in full scale if we are to avoid mass hunger and starvation.

SGRY is the largest employment programme in the country currently. I am distressed to find that many states are not utilising the funds that are available. A detailed report is presented in the report that includes replies from the states to the queries I have been raising on the implementation of SGRY.

Timely and adequate financing is essential for the proper implementation of relief works. It is unfortunate that there have been trading and counter trading of charges between the centre and various states on this issue. There have been many reports in the media that drought financing is being influenced by election considerations. This has also been discussed in other platforms. In drought conditions relief employment caters to people in acute distress. It is important to ensure that this does not get adversely affected due to political considerations. In this report

I have not gone into the question of how much financing is required. But I think it is important to ensure that there is complete transparency with respect to financing and the usage of funds. Both the Centre and the States have to clearly spell out their stands on the extent of the problem and the action required. They should also spell out the basis of the actions they take clearly. While I have concentrated on mid-day meal scheme and SGRY, given their importance, I have also covered a host of other questions in my correspondence and in my visits. The details on the status of implementation of the orders of the Hon'ble Supreme Court in PUCL Vs UoI and Ors is presented in the next section.

I have been receiving excellent help from many organisations across the country in executing my work. Ms. Anuradha Talwar of Right to Food and Work Campaign, West Bengal has been helping me in my work. She has presented a report on the status of implementation of various schemes in West Bengal, enclosed as **Annexure D**. She has shared the evidence with me of which I will be corresponding with the state government. I hope to present the details after taking into account the view of the government in my next report.

## PART II: STATUS OF IMPLEMENTATION OF VARIOUS SCHEMES COVERED IN THE INTERIM ORDERS OF PUCL Vs UoI and Ors

### MID-DAY MEAL SCHEME

I wrote a letter in December 2002 to the Secretary, Department of Elementary Education, regarding the poor performance of MDMS. Hereto annexed and marked **Annexure E** is a copy of the said letter.

Many states have shown a positive sign by starting cooked mid-day meals with part or full coverage. Rajasthan and Andhra Pradesh are the only two states that started providing mid-day meals after the order of the court, with full coverage. Gujarat has had a comprehensive mid-day meal programme for government schools. In compliance of the court's order, it has included government-aided schools in its coverage. Many States and Union Territories have started a token programme covering a small proportion of schools. Most of these have professed keenness in expanding the programme soon. What is regrettable is that some states do not even have a token programme. These include Jharkhand, Uttar Pradesh and Bihar. They have cited financial, logistic and administrative reasons for the non-implementation of the scheme. It cannot be emphasised enough that the programme can be of immense benefit in these states.

**TABLE 1: Status of implementation of the mid-day meal programme**

| State | Status of Implementation | Ramarks |
|---|---|---|
| Andaman & Nicobar | No response from State | |
| Andhra Pradesh | Fully Implemented | Children upto class 8 are covered in the scheme |
| Arunachal Pradesh | Partially Implemented | Requested implementation through locally procured food-grains owing to prohibitive transportation costs. |
| Assam | Not Implemented | |
| Bihar | Not Implemented | |
| Chandigarh | Partially Implemented | Though the scheme is intended to cover all children, as of last report, only a small proportion of schools were being covered. |
| Chattisgarh | Partially Implemented | |
| Delhi | Partially Implemented | |
| Goa | Not Implemented | The state has claimed that they are starting the scheme in some blocks soon. |
| Gujarat | Fully Implemented | |
| Haryana | Not Implemented | |
| Himachal Pradesh | No response from State | |
| J & K | No response from State | |
| Jharkhand | Not Implemented | |
| Karnataka | Partially Implemented | Covers only seven districts out of over twenty five. Has claimed that it is planning to extend soon to the rest of the State |
| Kerala | Fully Implemented | |
| Madhya Pradesh | Partially Implemented | Has been providing cooked meal in schools of Tribal areas since 1997. Was slated to extend the scheme to other areas, but there is no information of its extension |

| State | Status of Implementation | Ramarks |
|---|---|---|
| Maharashtra | Partially Implemented | Covers a small proportion of schools that too in tribal blocks only |
| Manipur | No response from State | |
| Meghalaya | No response from State | |
| Mizoram | No response from State | |
| Nagaland | No response from State | |
| Orissa | Partially Implemented | |
| Pondichery | Fully Implemented | |
| Punjab | Partially Implemented | Covers just one block per district |
| Rajasthan | Fully Implemented | Has requested that GoI share at least 50% of the financial burden owing to severe financial stringency & continuous drought |
| Tamil Nadu | Fully Implemented | |
| Tripura | Not Implemented | Has requested additional funds from GoI or the use of PMGY funds for the implementation of the scheme |
| U.T. of Lakshwadeep | Fully Implemented | |
| UT of D & NH | No response from State | |
| UT of Daman & Diu | No response from State | |
| Uttar Pradesh | Not Implemented | Has indicated impossibility of implementation due to operational, administrative and financial difficulties. The government's request that GOI bear the transportation cost has been rejected |
| West Bengal | Partially Implemented | Has announced that it will start the scheme in Feb in 4 districts |

Finance has been cited by most states as the chief problem in implementing cooked mid-day meal programme. Apart from financial problems, many states have expressed fears of administrative and logistical problems in implementing the scheme. A few have noted special problems pertaining to their state, and have made some special requests to enable them to implement the scheme. I note them below:

a) Some North Eastern States have requested that they be allowed to use locally procured food grains since the costs of transportation in the difficult terrain from the single FCI godown in the area are quite high.

b) Some drought-prone and North Eastern States have requested that the Centre allocate more funds towards the implementation of the scheme.

SGRY

Many poor people are not able to avail of the employment that SGRY seeks to provide since many States and Union Territories are not even utilising the available funds and foodgrain. With the exception of a few States, the utilisation figures are very low. In SGRY the states have to share 25 % of the cash cost. In some cases this was not done, thus impairing the progress of the scheme.

By letter dated 12.12.2002 I wrote to the Secretary, Ministry of Rural Development, regarding poor performance of SGRY during April to September 2002. Hereto annexed and marked as Annexure F is a copy of the said letter.

The position of states is indicated in **Table 2**. Some adjustments have been made to these figures, but the fact that there is a lot of unutilised grain and a proportionate quantity of unutilised cash cannot be disputed.

The thrust of my interaction with the states has been about implementing the scheme fully. I questioned the States and Union Territories about the non-utilisation of funds and about allotting their share of cash. Many of them have replied and have cited the following constraints in utilising the resources available.

a) Financial crunch in the State making it difficult to allocate its share of SGRY funds

b) Delay in release of instalments by the Government of India.

## TABLE 2: Allocation and Off-Take Under SGRY 2001-02

*Position as on 23.4.2002 ('000 Tonnes)*

| State | Allocation | | | Off-take | | | Off-take % |
|---|---|---|---|---|---|---|---|
| | Wheat | Rice | Total | Wheat | Rice | Total | |
| A&N Islands | 0 | 0.57 | 0.57 | 0 | 0 | 0 | 0.0 |
| Arunachal Pr. | 0 | 7.02 | 7.02 | 0 | 0 | 0 | 0.0 |
| Chandigarh | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| D&N Haveli | 0 | 0.69 | 0.69 | 0 | 0 | 0 | 0.0 |
| Daman & Diu | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| Delhi | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| Lakshadweep | 0 | 0.31 | 0.31 | 0 | 0 | 0 | 0.0 |
| Rajasthan | 137.59 | 0 | 137.59 | 9.52 | 0 | 9.52 | 6.9 |
| Goa | 0 | 1 | 1 | 0 | 0.1 | 0.1 | 10.0 |
| Bihar | 0 | 228.48 | 228.48 | 0 | 24.9 | 24.9 | 10.9 |
| Jharkhand | 53.54 | 115.52 | 169.06 | 8.47 | 10.01 | 18.48 | 10.9 |
| Gujarat | 92.45 | 0 | 92.45 | 11.6 | 0.14 | 11.74 | 12.7 |
| Tamil Nadu | 0 | 151.84 | 151.84 | 0 | 34.27 | 34.27 | 22.6 |
| Uttar Pradesh | 244.74 | 253.52 | 498.26 | 121.23 | 10.55 | 131.78 | 26.4 |
| Maharashtra | 153.9 | 81.86 | 235.76 | 39.81 | 24.58 | 64.39 | 27.3 |
| Assam | 0 | 328.7 | 328.7 | 0 | 102.58 | 102.58 | 31.2 |
| Kerala | 0 | 41.52 | 41.52 | 0 | 13.25 | 13.25 | 31.9 |
| Uttaranchal | 12.89 | 16.98 | 29.87 | 5.4 | 5.88 | 11.28 | 37.8 |
| Tripura | 0 | 32.67 | 32.67 | 0 | 17.36 | 17.36 | 53.1 |
| Punjab | 23.67 | 0 | 23.67 | 14.03 | 0 | 14.03 | 59.3 |
| Himachal Pra. | 7.19 | 9.06 | 16.25 | 5.08 | 5.46 | 10.54 | 64.9 |
| West Bengal | 0 | 225.6 | 225.6 | 0.18 | 146.57 | 146.75 | 65.0 |
| J&K | 9.73 | 19.98 | 29.71 | 6.46 | 13.2 | 19.66 | 66.2 |
| Pondicherry | 0 | 0.98 | 0.98 | 0 | 0.65 | 0.65 | 66.3 |
| Sikkim | 0 | 4.59 | 4.59 | 0 | 3.29 | 3.29 | 71.7 |
| Haryana | 88.79 | 0 | 88.79 | 66 | 0 | 66 | 74.3 |
| Karnataka | 22.55 | 158.96 | 181.51 | 17.9 | 117.88 | 135.78 | 74.8 |
| Mizoram | 0 | 7.25 | 7.25 | 0 | 5.55 | 5.55 | 76.6 |
| Meghalaya | 0 | 11.97 | 11.97 | 0 | 10.12 | 10.12 | 84.5 |
| Manipur | 0 | 8.38 | 8.38 | 0 | 7.3 | 7.3 | 87.1 |
| Orissa | 0 | 197.81 | 197.81 | 0 | 175.63 | 175.63 | 88.8 |
| Madhya Pra. | 265.88 | 89.92 | 355.8 | 253.78 | 78.57 | 332.35 | 93.4 |
| Nagaland | 1.45 | 5.18 | 6.63 | 1.45 | 5.19 | 6.64 | 100.2 |
| Chhattisgarh | 0 | 124.28 | 124.28 | 2.75 | 124.22 | 126.97 | 102.2 |
| Andhra Pra. | 0 | 232.44 | 232.44 | 0 | 381.67 | 381.67 | 164.2 |
| **Grand Total** | **1114.3** | **2357.0** | **3471.4** | **563.66** | **1318.9** | **1882.5** | **54.2** |

c) While funds are allotted in two instalments normally, Madhya Pradesh reports that this year only ad hoc finances were allotted initially. The actual allocation came late making it difficult for the state to use the finances on time.

d) Untimely delivery of grains by FCI citing lack of stock, delay in transportation and other reasons.

e) In many North Eastern States the weather permits only one season where works could be taken. Untimely delivery of grains or finances has resulted in cases where the opportunity has been missed for the entire year.

f) A part of finances are allotted to the Panchayats directly under SGRY. The State has no effective control over this and cannot ensure its utilisation.

g) The allocation per Panchayat is very low. In Rajasthan it is an average of Rs. 70,000 per Panchayat. This too comes in two instalments. It is difficult to take up any employment programme with such meagre amounts.

There have been many problems with the scheme at the ground level. I have received information from many places that there are inordinate delays in receiving payments. The wages for SGRY are paid partly in cash and partly in grain. In many places there were reports that the grain does not reach the labourers. There are also complaints that machines are being used in the programme, which could be outright illegal. The effectiveness of the programme is seriously undermined if machines are used in the process.

In my field visit to Orissa I visited an SGRY site with the collector of the district. I found that tractors are in use in the programme and the accounts that were presented to me did not tally. I brought it to the notice of the State government immediately. There are reasons to believe that such cases of corruption are widespread. Ground level verifications alone can help us identify this problem.

In my communication with the States and Union Territories, I have constantly brought to their notice deficiencies in the implementation of SGRY. I am also directing the complaints and information that I get from grassroots organisations to the respective governments.

Some States have made special requests to the Government of India to enable the implementation of the scheme. In particular, some North Eastern States have requested the Government to permit them to pay the entire wage in cash. FCI has just one godown for the entire North-east making it necessary to carry grain over long distances in difficult terrain. This makes transportation costly and unviable.

TARGETED PUBLIC DISTRIBUTION SCHEME

The prerequisite for the functioning of TPDS is identifying all families that are below poverty line and issuing them BPL cards. The Court has in no uncertain terms said on many occasions that the beneficiaries must be identified and cards provided, at the earliest.

The government of Delhi had not taken up BPL identification till the Court ordered it specifically to do so. Many months after the order many people in various Bastis of Delhi are yet to receive cards. There is also a total lack of transparency in the process. It is reliably learnt that the staff of the implementing agencies are demanding stiff bribes to issue cards and even to process the applications. Parivartan, an NGO based in Delhi has made a list of over five hundred people in just one Basti of Delhi who have not received their ration cards. They have not been informed either of the status of their application. I will forward the list to the government of Delhi. It is learned that the organisation has also recently submitted a list to the Chief Minister of Delhi for examination.

In a public hearing at Barawan, U.P. organised by highly reputed NGO most people reported that they have not had a ration card in many years (according to a recent analysis of National Sample Survey data by the World Bank, 10% of poor households in Uttar Pradesh do not have any ration card at all). This was further confirmed in a field visit by people who are directly assisting me in my work as a commissioner. Reports indicate that this is the case in large parts of Uttar Pradesh. The case needs to be looked into in detail since Uttar Pradesh government has claimed that it has issued cards to well over 90 % of its population. People are unaware of their entitlements and have not received rations for a long time now. The silver lining is that Antyodaya and Annapurna cards were seen with more regularity and many beneficiaries reported of receiving grains.

Identification of BPL households takes place every five years and a round of identification is currently taking place all over the country. Each family is supposed to be covered in the survey, based on which families are identified as BPL or APL. In a public hearing held recently in

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Barawan most people reported that they have not heard about the survey. Very few families reported that they had been surveyed; meanwhile the local administration claims that the survey has been completed. In a private conversation, one of the Panchayat secretaries indicated that he is unable to cover most houses since he is expected to do the exercise in record time. This problem is compounded by a total lack of transparency in the process.

In many states, having a BPL card has become an eligibility condition for various government schemes (even employment programmes in some cases). The identification has to be done carefully and cards have to be issued immediately in order to avoid unfair exclusion of poor people from these schemes. The states cannot have a valid reason for not issuing the cards to the beneficiaries so far. It is important to fix responsibilities for this gross failure. I have included a prayer for forming committees to examine the issues in detail and make reports on who is accountable for the failure.

I found problems with BPL identification in Maharashtra where the Food Secretary admitted that the homeless and migrant labourers are not being given ration cards. In the tribal villages I visited in Orissa also, most families did not have their ration cards. The states cannot have a valid reason for not issuing the cards to the beneficiaries. It is important to fix responsibilities for this gross failure.

PENSION AND ANNAPURNA SCHEMES

This has been one of the relatively successful ventures of central and state governments. These schemes reach the aged destitute, widows and disabled who are among the most vulnerable people in the country. Annapurna is a grain based social security scheme given to people who are eligible for a pension, but are not receiving it.

A large number of eligible needy people have been left uncovered by the two schemes. In many states, the existing allocation for the two schemes have not been used fully.

Despite these problems the Old Age Pension and Annapurna schemes are relatively successful. The small, regular payments in these schemes attract less misappropriation than large, one-off payments. High levels of automaticity reduces discretion among the local officials and payment of pension through post offices and banks, and strong awareness among intended beneficiaries of their rights correspond to reduce leakages.

INFORMATION DISPLAY

In my field visits I found poor awareness among beneficiaries of the various schemes and benefits that they were entitled to. Lack of information can cause serious confusion and results in the intended beneficiaries not availing the benefits of the schemes. A survey done by a reputed health organisation CEHAT in 91 villages of Maharashtra showed that the translated orders of the Supreme Court order were displayed only in six out of 91 villages and only in 16 villages were the names of the identified beneficiaries displayed in the gram Panchayat. This was true of all the schemes. From independent reports, there is reason to believe that this is true of many other states.

## PART III: PRAYERS AND RECOMMENDATIONS

From my correspondence with the states, field visits and analysis of information on various schemes, I would like to make the following recommendations.

MID-DAY MEAL SCHEME

The states that have not started providing cooked mid day meals in any scale should be held accountable for total violation of the orders of the Hon'ble Supreme Court. They should also be directed to implement the programme immediately. The states that have started the scheme in a token way should extend the scheme to cover all government and government-aided primary schools in the state. Towards this, I request the Court to provide the following directions:

a) All States and Union Territories that are not providing cooked mid-day meal in all government and government aided primary schools should give a credible time frame, no later than the starting of next academic year, within which they have to provide cooked mid-day meals in all government and government-aided primary schools.

b) Within two months, all these states should make an adequate budgetary provision, call for tenders for utensils and other equipment, start an appointment process for cooks and helpers, and prepare guidelines for full implementation of the scheme.

c) Permit me to set up an expert team to prepare a budget for implementing the cooked mid day meal programme based on existing model programmes in other states. The budget prepared by the team shall be considered by the Hon'ble Supreme Court in case the States fail to make financial provisions by one month.

d) Direct all states to continue the mid-day meal programme during the summer months in drought-affected districts, to protect children from acute hunger during those months. Direct the Government of India to provide grain free of cost, based on the usual norms, to enable this extension during summer months.

SGRY AND RELIEF EMPLOYMENT FOR THE DROUGHT HIT POPULATION

SGRY is the largest employment programme in the country today. Augmenting its financial allocation is necessary to cater to a large number of poor. But, the minimum the governments should do is to ensure that the available finances in it are used fully.

e) Direct the respondents to utilise on time the entire allocation of funds and foodgrain under SGRY and all the welfare programmes covered by the previous orders of this Hon'ble Court, and to release their share of funds on time.

f) Direct the Union of India to release foodgrains and funds on time to ensure that the state governments do not have difficulties accessing resources allocated to them under the SGRY and other welfare schemes.

g) For an order directing that the respondents may pay 100% of the wages in terms of foodgrains only if they so desire in the face of serious financial constraints.

ISSUE OF RATION CARDS

Despite directions from the Court for identifying the BPL population and issuing cards to all of them, some states have not done so till date. In Uttar Pradesh the survey for identifying the BPL population was done many years back and infact the next round is well on its way. Still most people in Barawan Block of UP have not got their ration cards of the last season. The responsible officers should be held accountable for non-distribution of cards.

h) Direct all the State Governments and in particular Government of Delhi to immediately issue ration cards where it has not been doing so far. Also direct them to open a registry for complaints regarding BPL cards. The commissioner should be regularly appraised of the complaints and the action taken.

i) Migrant workers shall also be entitled to draw grain on their existing Below Poverty Line (BPL) cards notwithstanding the fact that they migrated outside the area where they reside.

j) All Below Poverty Line (BPL) cardholders shall be entitled to take their allotted quota in instalments and even collect their quota partly or in full for the previous months as well.

k) The respondents be directed to ensure that the ration cards ought to remain with the beneficiary at all times and never ought to be kept by the person operating the ration shop. Strict action be taken against ration shop operators who disobey this direction and their licenses may be cancelled.

ACCESS TO INFORMATION

l) Since we now have a central legislation on Freedom of Information, I request the Court to consider directing all the States without a Right to Information Act to pass one in consultation with civil society groups at the earliest. In the interim period, administration should ensure that the PRIs, especially Gram Panchayats, display all vital information pertaining to SGRY, especially receipt of funds and how they are being spent, in the Panchayat Offices or on a prominent board outside the school, for the information of the public. Second, all relevant records should be open to inspection, and third, members of public should also be able to obtain photocopies of documents pertaining to development projects as also matters of general public interest by paying a nominal charge. Particularly, all bills, muster rolls, vouchers, estimates and measurement books, also the criterion and procedure for selection of beneficiaries, and list of beneficiaries should not only be available for inspection, but photocopies of these relevant documents should be given on demand from a convenient place, such as Block or Tehsil Office. In Gram Sabha meetings vouchers and muster rolls must be read out.

m) Direct all States and other agencies to share any document with a bearing on any food or employment scheme, or having a bearing on the implementation of the orders of this court, with any person authorised by the commissioner.

n) The respondents be directed to ensure that all circulars relating to the schemes and the progress of schemes be displayed on the website of the state, and physical progress on website of the districts, wherever existing, within eight weeks from today, to ensure transparency and publicity.

o) The Chief Secretary/Administrator of each State/Union Territory should review the schemes at least once a quarter and send a quarterly

monitoring report to the Supreme Court Food Commissioner through the nodal officer giving full details in such a report of the progress of each scheme and the bottlenecks faced.

p) Similar direction should be given to the Secretaries of the concerned GOI Ministries to review the schemes once a quarter and send their review report to the Food Commissioner.

PENSION AND ANNAPURNA

Pension schemes including Old Age Pension, Widow Pension, and Pension for the Disabled function relatively well and are much less costly to administer. It is important to exhaust the current budget and cover as many people as it can accommodate. The pension schemes also cover a very vulnerable population. Currently a large number of deserving people are left out and it is highly recommended that the coverage of the scheme gets doubled. Annapurna is a free grain transfer scheme for 'people who are eligible for pensions, but are not receiving it'. It shares the same merits as pension schemes. Given this I request your honour to consider giving the following directions:

q) Direct the Union of India, States and Union Territories to double the coverage of pension schemes, and allocate appropriate resources. In case this is not possible immediately all over the country, it should be started within two months in the 100 poorest districts of the country.

r) The respondents be directed to maintain a waiting list of potential beneficiaries of the National Old Age Pension Scheme and to include such persons in the scheme on the death of existing beneficiaries.

s) All States have to complete the identification of Annapurna and beneficiaries within eight weeks from today. In particular Maharashtra be directed to complete the identification of 60,000 Annapurna beneficiaries.

VERIFICATION OF REPORTS ON STARVATION DEATHS

In an earlier order, the Hon'ble Supreme Court held that the chief secretary would be held responsible if a starvation death is established in a state. It is important to verify the all news reports and other information that claim a starvation death. Apart from looking at the proximate cause of the death it is also important to look at whether the government has done its duty by implementing the schemes and mitigated suffering and thus reduce the chances of occurrences of starvation deaths. Towards this, I request you to consider giving the following direction:

t) The respondents be directed that any complaint received including news items relating to hunger deaths should immediately be inquired into by a senior officer and a report sent through the nodal officer to the Food Commissioner. The senior officer should also look into the progress of food based and other safety net schemes in that village/ locality for the past six months. It is quite likely that these schemes are not functioning smoothly in that village/locality that has led to starvation or malnutrition death.

# ANNEXURE - A

**22nd Oct 2002**

Shri D. P. Bagchi
The Chief Secretary and
Chief Development Commissioner State of Orissa

Subject: Non compliance of Supreme Court orders in Orissa

Dear Mr Bagchi,

I had visited Keonjhar and Kalahandi districts in Orissa a few months back to assess the working of the food and employment schemes, in addition to programmes of nutrition and health. I visited several villages in different blocks.

To my dismay, I found out that the food and employment schemes were not being properly implemented. They were marred by wrong targeting of beneficiaries, inadequate infrastructure & foodgrains, rampant corruption and unawareness of schemes among beneficiaries. I could see a lot of problems in working of the schemes which could be averted if there is proper attention and supervision of these schemes. Distribution of BPL rice was rather irregular. I came across many cases in the villages where shops opened only on one or two days in a month. Also, people were refused grains if they did not lift it on the allotted days, and came next month to lift the backlog. I was informed that due to this about 40% of the entitlement was not being lifted from the FCI. This problem can easily be solved and full quota of the district utilized by permitting people to come on any day and lift their quota for previous months too. There were many very poor families in the border villages of Keonjhar who were denied facilities of BPL rations, on the ground that they came from outside the district, although local enquiry showed that they were living for more than two decades in that very area. The BDO who accompanied us admitted that they should have been in the BPL list, but expressed his inability to help them as a government circular had desired reduction in the overall numbers under the BPL category.

In a tribal village the situation was ever worse. None of the families had been given new BPL cards that are currently in use in other part of the district for more than a year. People there have not received any grain after 2000. Only one family was given Anyodaya card but he got no

rations. People complained that the panchayat did not give them BPL cards because they were Adivasis (tribals).

The ICDS Aganwadi centers I visited were also not functioning well. At many places grains were not reaching the centre at all and there had been no feeding for the last several days. I also came across cases where Anganwadi workers were not being paid their honorarium on time. It was delayed by 3-4 months. I visited a tribal village Purunaguma in GP Karalapath. There the Anganwadi Centre was locked by the Contractor, who had done some repair job in the building, on the pretext that his payment was held up in the block. Cooking used to be done in the house of the Anganwadi worker, although she admitted that there had been no feeding for children for the last several days, as the stocks were limited and had not been replenished.

Employment schemes hardly benefiting the poor – Our investigations of SGRY revealed that foodgrains and money were not reaching in time, wage payments were lower than prescribed limits, tractors were being used for earth works, contractors were involved, no foodgrains were given as wages and allotted funds were not being fully utilized for the scheme.

The Budhidhar panchayat receives 2.5 to 3 lakh Rs every year under SGRY scheme. From that head a tribal village Koila Munda that we visited, received Rs 25,000 for strengthening the village link road by covering it with morrum. About 15-16 workers and two tractors were engaged in transporting morrum from the hillside to the road for four days, and another five people were employed for four days for laying that morrum on the road. People were engaged on contract basis (palli sabha Ward Member was the contractor), and wages were decided on the basis of amount of work done by them. We calculated that they received on an average 35 to 38 Rs as wages for about 6 hour of daily work. The Collector, who had accompanied me to this village, calculated that the total payment of wages came to (16x4 + 5x4) x 38 = 3172, that is only 12.5% in a work costing Rs 25,000. No foodgrain was distributed as part of the wages.

Collector was informed by the Ward Member that a total payment of 7,000 was made to the two tractor owners (who were rich farmers of the same village and were present in the meeting). Thus in all a little more than 10,000 was spent, but bills of Rs 25,000 were submitted by the Ward Member to the block in last October. He has not received any payment so far, but he had spent the entire amount of Rs 10,000 from his own pocket.

During my visit I found the following violations of the Supreme Court orders.

1. Identification of BPL families: As per Supreme Court order of 28 November 2001, all states were to complete the identification of BPL families by 1 January, 2002. Many families did not possess the ration card when I visited the villages.

2. Provision of grain to BPL families: the Supreme Court has directed the state governments to ensure that all BPL families receive their entitlement each month. My report suggests that this was not being observed. This is borne out not only by the villagers' testimonies, but also by the ration cards and by the local PDS dealers.

3. Delivery of Antyodaya grain: My investigations show that grains are not reaching the beneficiaries of Antyodaya Anna Yojana.

4. ICDS centers non functional: Supreme Court had directed the state government to ensure that every ICDS centre in the country shall provide supplementary nutrition (as prescribed in the scheme) to infants and pregnant and lactating mothers. My visit shows that children in the age group 0 to 3 were not cared properly by the Anganwadi Worker and pregnant mothers were not given benefits due to them under the NMBS programme. Backlog was huge in Keonjhar district. The scheme of giving Rs 500 to each BPL pregnant mother is not running well at all. Fund allocation for this district is so meager compared to the requirement that there is a four year backlog. According to the district figures roughly 25,000 births take place in a year. If half of them are BPL families, the scheme should be benefiting 12,500 women, against this number only 1818 women were given the assistance during 2001-02 under the scheme.

5. SGRY not according to the guidelines and Supreme Court orders: Involving contractors and tractors, late payment of wages, funds and foodgrains not reaching on time and no involvement of gram sabha are a few violations of the orders noticed by me. These are very serious violations of the Hon'ble Court's order. These issues were also brought to the notice of the Collector soon after my visit. I request you to take further action under intimation to me, so that I may inform the Supreme Court.

Warm regards,
N. C. Saxena

# ANNEXURE B

**Minutes of the meeting of the Food Commissioner with the Chief Secretary and other senior state government officials of the Maharashtra government at Bombay, 25th January, 2003**

Dr. Saxena thanked the Chief Secretary for calling the meeting, and requested that the state government may consider the following suggestions for improving implementation of the schemes mentioned in the various Supreme Court orders:

1. It is in the interest of the state to draw and fully utilize the entire quota of subsidized foodgrains and other funds from GOI, and ensure that these are properly distributed to the poor and deserving. Therefore the concerned Secretaries should monitor the progress of the schemes every month, identify the bottlenecks and send a quarterly monitoring report to the Supreme Court Food Commissioner through the nodal officer. In many schemes, such as TPDS, SGRY, NMDS, and Annapurna the performance of the state is poor and the quota given to the state by GOI is not fully utilised. It is easier to correct the macro picture by removing bottlenecks, and the senior Secretaries should take on this responsibility.

2. At the same time, the micro picture, which requires efficient distribution and delivery, needs to be improved. The state government may identify well reputed professional organizations to do sample check of the schemes at the field level, and report to the state government why the benefit of the schemes is not reaching the poor people. The methodology for such studies may be drawn in consultation with the civil society. Reports thus obtained should be widely shared with the public by putting it on the state website.

3. All important circulars as well as progress of the schemes should be put on the website, so that its dissemination is facilitated.

4. The nodal officer should maintain a proper register of complaints received from the Food Commissioner's office, and follow up their redressal.

5. All complaints and news items pertaining to hunger deaths must immediately be enquired into by a senior officer, who should also look into the progress of food based and other safety net schemes in that

locality for the past six months. It is quite likely that these schemes are not functioning smoothly in that village / locality that has led to starvation or malnutrition death. One such complaint relating to hunger death of tribals in Gorigaon area had appeared in the Times of India dated 24th January, and the copy of the paper was given to the Chief Secretary with the request that a report on the lines indicated above may kindly be sent to the Food Commissioner by the end of Feb 2003.

As regards progress on the individual schemes, the following suggestions were made by the Food Commissioner:

**TPDS** – The state government has identified about 63 lakh BPL card holders, but it appears that a large number of the poor have been left out. It was admitted by the Food Secretary that the homeless have not been given ration cards, although they have been living on the footpath or unrecognized slums and therefore may be the poorest. Similarly migrant population is left out, although they may be living for more than 3 months continuously. These policies must immediately be reviewed, because to deny a BPL card to the poorest is certainly objectionable. Many of them may be even eligible for Antyodaya cards. The Food Commissioner requested the state to launch a campaign to record them and weed out bogus or undeserving names from the BPL list, and submit a report to the Food Commissioner by the end of the February 2003.

Food Commissioner referred to his meeting with the representatives of the Civil society on the 25th January forenoon, and said that most of the complaints raised by them were pertaining to the TPDS. Some of the serious complaints that need to be looked into by both the senior officers and the professional organizations (that the state would appoint to get the true feedback) are:

— The poor do not have cash to buy 35 kg at a time, and often they are not permitted to buy in instalments. The least that can be expected in this regard is that delivery system permits the poor to buy their rations at least on a weekly basis.

— Often the grain distributed is of very poor quality. One such sample was given to the Chief Secretary with the name of the shop from where the sample was taken. People are not aware of instructions that they can ask for replacement, as these instructions have not been put on the website, or publicized. Sample of the distributed grain is also not displayed in all the shops.

— A survey of 91 villages done by CEHAT showed that only in 6 out of 91 villages translated copies of the Supreme Court order was displayed in the gram panchayat. Similarly only in 16 villages the names of the identified beneficiaries were displayed in the gram panchayat. This was in fact true of all other schemes too.

— People were refused grains if they did not lift it on the allotted days, and came next month to lift the backlog. I was informed that due to this about 30 to 40% of the state entitlement was not being lifted from the FCI. This problem can easily be solved and full quota of the state utilized by permitting people to come on any day and lift their quota for previous months too.

— Forest dwellers are not given ration cards, especially living in the vicinity of the Sanjay Gandhi National Park.

— BPL cardholders are forced to lift rice at the APL price too. One such receipt showing that a person was given 25 kg at the BPL price and 5 kg at the APL price was shown to the Chief Secretary in the meeting, and a photo copy was made available to the Food Secretary.

Food Commissioner requested the Food Secretary to plug all the loopholes and ensure 100 percent lifting of the BPL quota.

**Antyodaya** – Food Secretary said that about 10 lakh people were identified, and lifting was 95%. However, the survey of 91 villages showed that identification was not complete in 50.5% villages, and in 27.5% villages grain was not being distributed under the scheme.

**Annapurna** – The state government admitted that it had been able to identify only 8,000 people in this category against a target of 60,000 set by GOI. As the population of above 65 years in the state is about 45 lakhs, out of which surely 12 lakhs would be below the poverty line, the contention of the state government that there are no eligible candidates for this scheme cannot be believed. Even if 7 lakhs are getting pensions it still leaves five lakhs out of which 60,000 most deserving cases should be selected. For both, the cash pension scheme as well as the Annapurna scheme, one should have a waiting list so that the number of eligible people does not fall because of death. Therefore, allout campaign should be launched, and the help of civil society may be taken in identifying the full number of 60,000 by the end of March, 2003.

**NOAP** – The state is running a complementary scheme, due to which the total number of old people getting pensions has increased to about 7

lakhs. In 2001-02, 255 crore Rs was distributed under the scheme. The survey of 91 villages indicates that against the Court's order that pension must be distributed by the 7th of every month, often pension of two to three months was given at one time. The procedure for including people under this scheme as well as in NMBS needs to be simplified.

**NMBS** – The progress is extremely unsatisfactory, because only 30,000 women are getting benefit under this scheme annually as against about 30 lakh new births in the state every year. Out of 30 lakh, at least 3 to 4 lakh births would satisfy the three conditions; BPL, age of mother above 19, and first or second child. Thus the state must launch a campaign, and reach every pregnant and eligible mother for the cash benefit. It was also complainted that in place of cash often tonics are being given, which is against the norms. In the meeting of the Chief Secretary with the NGOs in December, 2002 this issue was raised, and the Director of Health services Dr. Salunkhe had admitted giving medicines on the ground that there were complaints about giving cash as some men took away the money from their wives. However, this is not fair, as well as against guidelines. It is better if an account is opened in the name of the wife and money deposited there.

**SGRY** – Distribution of foodgrains in the state under this scheme is much below the norm of 5 kg per day or 50% wages. Against the allocation of 3.74 lakh tones of foodgrains during the period 1.1.02 to 13.01.03, actual lifting was only 2.42 lakh tones. It was extremely poor in some of the most poor districts, such as Dhule, Beed, and Amrawati. The Food Commissioner's office has details of the SGRY programme given for the months of Aug – Oct 2002. It shows that:

- Only 3 districts have used over 50% of the monitary allocation.
- 22 districts have not used over 50% of the allocation in any given month.
- 8 districts had used less than 10% of the allocation on at least one month. On some occasions there was no utilization.
- Of a total of 212.82 thousand tones allocated to Maharashtra, only 125.97 thousand tones was lifted and out of it just 56.29 thousand tones was distributed for the period April – August 2002.
- Of a total of 233.61 thousand tones allocated to Maharashtra, only 65.64 thousand tones was lifted and out of it just 20.93 thousand tones was distributed for the period 2001-02.

The issue of control over the programme by the block officials was also discussed. A survey needs to be done to find out whether the schemes

are really being formulated by the panchayat and the gram sabha or these are thrust upon them by the block officials.

The state government has asked the GOI to reduce the ration from 5 to 2-3 kg per day per worker. This suggestion is certainly not in the interest of the poor workers, as they would then have to buy foodgrains at a higher price from the market. I explained to the Chief ecretary and others that lower level corrupt officers do not like to mess around with foodgrains as dealing with cash is more convenient to them. It is they who create this impression that the poor do not like foodgrains. One must not accept such anti-poor statements. What is needed is to ensure that only good quality foodgrain is distributed, and action should be taken against the FCI officials if they insist on supplying poor quality or damaged food stuff.

**ICDS** – Adolescent girls are still not being given any ration by the state government. According to the data collected from the districts only 0.74% of children in the tribal areas suffered from grade III and IV malnutrition. This is gross under-reporting as the NFHS data for 1998-99 showed that this (% of children below minus 3 SD) for tribal children was 35.4%. The state government must now allow such a degree of bogus reporting. Corrected data that is consistent with SRS, MICS and NFHS data may kindly be reported to the Food Commissioner by the 31st March 2003.

**MDMS** – So far the Mid-day meal scheme was being implemented only in tribal areas. Maharashtra Government has now decided to implement the scheme in the entire state from 1st January 2003. It will also allocate Rs.0.50 per day per student towards cooking charges, fuel and also for dal etc. which is needed to provide along with rice. While these decisions are welcome, it was admitted by the state government that necessary funds for extending the scheme to non-tribal areas and for increasing the norm from 0.25 to .50 Rs per child per day have still not been issued, with the result that in the field the scheme is running only in the tribal blocks. Mr Phatak clarified that financial sanction will be issued within a week. Independent survey report indicates that:

- The posters of the scheme are not put up at public place in any of the villages yet.

- The teachers still have an impression that they have to cook the food. So there is a lot of resistance from teachers for this scheme. The teacher's unions are refusing to support the scheme.

• In many areas parents are asked to contribute money for implementation of the scheme. So even the parents are refusing the scheme. Due to this the scheme has stopped after two months in villages Amboli and Junnar in district Pune where the scheme had started in June.

• The survey of 91 villages indicated that even in tribal talukas, cooked meals are being given in less than one-third of the villages. State government's own figures dated 2.1.03 show that there were 9733 schools in the tribal areas, out of which cooked meals were being given only in 4041 schools. The worst picture is in the poorest district of Nandurbar where out of 1324 tribal schools only 70 schools were giving cooked food. Yeotmal had 564 tribal schools but only 15 supplied cooked food.

Clearly, much more work is to be done by the state government to implement the Supreme Court's orders, both in letter and spirit.

(N. C. Saxena)
27th January, 2003

# ANNEXURE C

**Minutes of the meeting of the Food Commissioner with the District Collector and other senior district officers of district, Chandauli, 30th January, 2003**

At the outset the District Collector, Sri Mritunjay Kumar Narayan, a young, enthusiastic and committed IAS officer, briefed the Supreme Court Commissioner, Dr Saxena, about the various steps that he had taken to improve transparency and accountability in the food related schemes. He has himself been touring the most backward part of the district, fixing dates well in advance and personally supervising the distribution of various welfare schemes. He has devised a system of monitoring complaints and grievances, and requested the NGOs and others who are interested in improving delivery to remain in touch with him and constantly brief him about the delivery issues in the field.

On my suggestion it was decided to conduct a social audit of all important government schemes in the village Amdaha in panchayat Golawat on the 16th February in the prsence of the entire village and civil society representatives. The official team would be headed by the CDO, Sri Ajay Kumar Singh, who would reach there by 11.30 AM along with the official records showing complete record of all important government schemes, including musteroll since 1st April, 2002. The names of the beneficiaries would be read out to the villages and cent per cent verification will be done of not only the names of and amount given to beneficiaries, but also the quality of SGRY and other works done. The Collector also agreed to do so for at least one village in two months in future too.

Dr. Saxena thanked the Collector for organizing the meeting and calling the officers connected with food based schemes. He requested that the district may consider the following suggestions for improving implementation of the schemes mentioned in the various Supreme Court orders:

6. It is in the interest of the district to draw and fully utilize the entire quota of subsidized foodgrains and other funds from GOI, and ensure that these are properly distributed to the poor and deserving. Therefore the Collector should monitor the progress of the schemes every month, identify the bottlenecks and request the state government for modification in the guidelines, if necessary. In many schemes, such as TPDS for BPL, SCP (drought), NMDS, and NFBS, the district has either not been

able to get the required quota / allocation from the state / GOI or the quota given to the district is not fully utilized. It is easier to correct the macro picture by removing bottlenecks in distribution, and pursuing vigorously with higher ups for allocation.

7. At the same time, the micro picture, which requires efficient distribution and delivery, needs to be further improved. The district may identify pockets of hunger and distress and do a sample check of the schemes at the village level on the lines suggested above for village Amdaha. A few such audits if well publicized will really electrify the field machinery, and they will realize that they cannot get away with sloppy work. Reports thus obtained should be widely shared with the public by putting it on the district website.

8. All important circulars as well as progress of the schemes should be put on the website, so that its dissemination is facilitated. The Collector accepted my suggestion of compiling all that relevant information, which is not generally available with the public (such as names of Antyodaya beneficiaries), and which even Pradhans like to keep it to themselves (musteroll), print a booklet and allow private vendors, STD shops to sell that booklet at a price. This will reduce the dependence of the ordinary person on administration, and improve transparency at all levels.

9. All complaints and news items pertaining to hunger deaths must immediately be enquired into by a senior officer, who should also look into the progress of food based and other safety net schemes in that locality for the past six months. It is quite likely that these schemes are not functioning smoothly in that village / locality that has led to distress or malnutrition death.

As regards progress on the individual schemes, the following suggestions were made by the Food Commissioner:

Foodgrain distribution in SGRY needs to be improved. As against 451 lakhs of available money in SGRY I, expenditure was 340 lakhs, but as against 1370 tonnes of foodgrains distribution was only 137 tonnes. In Naogarh black too, as against 32 tonnes of lifted foodgrain only 10 tonnes was distributed. Similarly in SGRY II, fund utilization was 349 lakhs out of 449 lakhs, but only 323 tonnes out of 1378 tonnes of quota of foodgrains was lifted. Thus whereas cash distribution is more than 80%, grain distribution is less than 20% of the allotted quota. There was no complaint about the quality of foodgrains, but its supply from

the FCI Varanasi was irregular. The other problem was that the state government had not given any margin for transport in case of Antyodaya quota, leading to complaints of over-charging.

The district has received an allotment of 3605 tonnes under Special Component Plan (drought relief) under which the district could pay 8.5 kg of foodgrains as daily wages and the cash component of wages could be linked with any on-going scheme. Although more than 3 months have passed, works under this scheme have still not started. I requested the officers concerned to remove bottlenecks, as there should be a lot of labour intensive works, such as renovation of canals and tanks, afforestation, soil conservation, etc. that could be undertaken with this allocation. I gave the example of Anantapur (Andhra Pradesh), where the district has utilized 2.2 lakh tones rice worth about Rs 160 crores for several developmental programmes in a year's time. Several hundred schools have got boundary walls, each panchayat has a building now, and tanks have been dug and renovated. As SGRY permits use of funds and foodgrains for private assets for SCs / STs and BPL category of people, the district had even got household toilets constructed with 3 kg of rice, and no cash payment. Similar innovative vision is expected from Chandauli.

The district has identified 4,900, 18,549, and 102,451 peopleunder the Annapurna, antyodaya and BPL categories. Although lifting is satisfactory under the first two categories, only about 65-70% of foodgrains are being lifted and distributed under the BPL category. This district should examine bottlenecks in detail and take remedial action to ensure better distribution of the entire BPL quota. For instance, the district could ask for more wheat than rice, if that is the people's preference. As GOI has more wheat than rice, there should be no problem in accepting this demand. Then, the district could allow the card holders to lift the backlog of previous months too. It is the experience that people are often turned away from the shops if they demand the unlifted quota of previous months. Women self-help groups and other such societies and even NGOs should be considered for giving shops in far flung and difficult areas. Storage capacity at the blocks should be improved. More godowns could easily be constructed with SCP grain quota, by linking it with SGRY cash.

The state government has not yet started the scheme of serving hot cooked meals in UP, which is violation of Supreme Court's orders. This needs to be again brought to the notice of Chief Secretary who is requested to follow the example of Orissa, Rajasthan, Gujarat, and Andhra

Pradesh where the scheme is running. The district has a quota of 97 EGS schools out of which only 47 have been opened. This is another good scheme under which the remote and backward areas can be helped.

The Old Age Pension is being distributed to 12331 beneficiaries through the banks and their sixty branches. 11,192 beneficiaries have been given both the instalments of the year, and the rest would too be given the second instalment soon. However, the state government has made no allocation for administrative expenses of 4%, which was allowed when the scheme was a CSS, I request the state government to kindly consider this. In order to ensure hat deaths do not reduce the number of beneficiaries, it is desirable that a waiting list (this could be of Annapurna beneficiaries) is prepared. Some banks take a lot of time in making funds available to the beneficiaries. They should be made aware of the Supreme Court orders in this respect.

Under the **NMBS**, the allocation to the district of only 18 lakh Rs is woefully inadequate, which covers only 3600 births, whereas for a BPL population of 6 lakhs in the district the number of births could easily be 20,000 out of which at least 12,000 would satisfy all the conditions of the scheme. The district should therefore ask for a higher quota from the state. Similarly the allocation under NFBS for only 230 deaths seems inadequate. The procedure in such schemes needs to be simplified. Often there are too many unnecessary certificates that are demanded. For instance, SDM is supposed to verify that the family belonged to the BPL category, whereas the BPL ration card is a sufficient proof of this fact. Cheques to these people are issued from the district head office, whereas the tahsils too have a sub-treasury and powers need to be delegated to the tahsildar to issue the cheque.

# ANNEXURE – D

## Status Report: Implementation of the Supreme Court Order in West Bengal

Prepared by Right to food and work campaign, West Bengal

### 1. Progress in Redress Mechanism

The West Bengal has appointed a nodal officer, Shri B. L. Meena, Special Secretary, Ministry of Food and Essential Commodities. It has also been informed by a court order about the appointment of the adviser. It is therefore now co-operating in giving information to the advisor. I met the nodal officer on 6th January, had asked him for information, and had given complaints that were received by me. He has supplied me with some information on the 24th January. In addition, Shri T. K. Majumdar, Joint Secretary, Department of Panchayat and Rural Development, and in charge of the SGRY scheme has sent information on this scheme.

### 2. Display of Supreme Court order still not there

According to the Nodal Officer, copies of the Court orders dated 28.11.2001 and 8.5.2002 have been displayed at Panchayat offices and fair price shops. The Nodal Officer has also provided the compliance reports of some districts. However, this is not true according to reports of various NGOs. The position that actually exists in these districts according to various NGOs will be given to the commissioner shortly.

### 3. Display of Beneficiary List Still Not Done

The Advisor had said that in some Gram Panchayats, lists of beneficiaries are still not being displayed. Consequently, many people do not know about the beneficiaries under the various schemes. There has been no reply about this from the Nodal Officer.

### 4. Identification of BPL Families Incomplete

The Advisor asked for the details of the procedure by which families were selected for BPL, and the criteria used for the choice; the date by which the State Government plans to make the revised list public in all districts of West Bengal.

The Nodal Officer has provided the Advisor with guidelines that were issued by the State Government on 21.5.2002 for rual areas on all DMs and on 14.6.2002 for urban areas.

The guidelines have however not been followed, as is obvious from copies of petitions that have been given to me. The petitions show that:

- Individuals have received no response to appeals for enlistment in the BPL list.
- BPL lists have not been displayed in many places.
- There have also been complaints of many families being struck off the BPL list inspite of no change in their economic situation.
- People are also complaining about rich people being included in the BPL.

In addition, though the final list was supposed to be prepared and published by the 1st July, 2002 in rural areas and by 17.7.2002 in urban areas, it had not been finalized and displayed in many areas till 1st February.

There is also confusion about the guidelines. The guidelines or circular that the Nodal Officer has given says that competent officers will examine appeals and objections. However, there have been reports of striking off names and inclusion in a totally ad hoc manner with no "competent" officers involved in examining the appeals and objections. There have also been newspaper reports that the State Government has not accepted the guidelines of the Central Government for revision of the BPL.

**5. Opening of ration shops**

The State Government has ordered ration shops to remain open from 7 am to 11 am and 2.30 p.m. to 5.30 p.m. (from 16th October to 15th March), with closure only on Sunday afternoons and for the whole day on Mondays. Some districts (e.g. North 24 Parganas) have given compliance reports on this.

The field reports that have been received however show that ration shops continue to remain open for 1-2 days in the week.

**6. SGRY Funds Are Available, But No Work Has Been Provided For Applicants**

A list of villages and blocks where work has been applied for under the SGRY, but where no work has been started, was given to the Nodal Officer on 6.1.02 by the Advisor. The Department of Panchayats and Rural Development has sent letters to DMs of the districts from which complaints of no work under SGRY were received.

On the other hand, the report provided by Shri TK Majumdar, Joint Secretary, Department of Panchayat and Rural Development, shows that there are sufficient funds available in the districts in which work is being asked for. About 0-40% funds were still available at the end of December, 2002.

Copies of some more petitions asking for work have been received in the meantime.

**7. Identification of Beneficiaries and Distribution of Foodgrains under Annapurna and Antodaya Anna Yojana**

The report provided by the Nodal Officer shows that under the Antodaya Yojana the number of identified beneficiaries are 704655 as against the target of 793937 beneficiaries i.e. 89282 remain to be identified. Also, the number of targeted beneficiaries under Annapurna Anna Yojana is 80020, but identified beneficiaries are 56539 i.e. 23481 remain to be identified.

Though there are still beneficiaries left to be identified, the local authorities have not responded to applications by destitute and needy persons for enlistment under these schemes.

Some beneficiaries have also complained that they are not receiving the full amount of grains under Annapurna Yojana and Antodaya Anna Yojana, inspite of enlistment.

*NOAPS money delayed*

The Nodal Officer has given statements of financial and physical progress for the year 2001-2002 and upto September 2002 for NOAPS. These show that upto September 2002, no funds have been received under NOAPS for the year 2002-2003.

This means that pension holders under NOAPS are definitely not receiving money by the 7th of every month. In fact, there are delays of at least a year in the instalments that they are receiving.

The above has been confirmed by some of the petitions that have come to me. A lot of old people have asked for enlistment under NOAPS, but have received no response. Inspite of the totally destitute situation of these old people, they have also not been considered for inclusion under Annapurna Yojana, though there are still 23481 beneficiaries less than the targeted number.

## 8. NFBS and NMBS, no funds for 2002-2003 under NFBS

The Nodal Officer has also given statements of financial and physical progress for the year 2001-2002 for NFBS and NMBS and upto September 2002 for NFBS. These show that no funds have been received under NFBS upto September 2002 for the year 2002-2003. This means that people shall not be given benefits under NFBS within a month of the death of the main bread earner.

Various people have applied for help under NFBS and not received the same as yet.

*MDMS started but no details as yet*

For MDMS, the State Government has allotted Rs.162.09 lakhs to start cooked meals in some of the schools (1100 schools) in 5 districts. The exact areas / blocks / CPs in which these schools are has however not been given, inspite of the Advisor's request for this information. Therefore, it is not possible to say what the performance is like. In addition, inspite of the Advisor's request to give the date by which the State Government intends to start cooked means in other districts of West Bengal, the nodal officer has provided no such date. Therefore, we do not as yet know when this facility will be extended to all primary school children.

In addition, schools where cooked meals have not been started are complaining about the quality of rice being given to them

## 9. ICDS – no food for adolescent girls, stoppage of food for infants for 6 months

Under the ICDS, we have found that everywhere, inspite of the court order, adolescent girls have not been receiving food from the Anganwaris. At most, in one center only 1-2 girls have been identified for food, though there are many such girls present in the village. No reply has been received on this from the Nodal Officer.

In addition, members of the Shramajibee Mahila Samity from 6 No. Dogacchia and Muragacha GP in Nakashipara block complained on 6.1.03 to the CDPO, Nakashipara block, Nadia district, that food for infants (6 months to 3 years) had been stopped from May, 2002. In addition, they complained that food at the Anganwaris had also been stopped from 14.11.02. The CDPO has assured them that the infants and children will be given all the foodgrains that are due, but so far, this has not been provided to them.

# ANNEXURE-E

To
Shri S. C. Tripathi
Secretary
Department of Elementary Education
Ministry of Human Resource Development
Shastri Bhavan,
Government of India

Subject: Non compliance of Supreme Court on Mid day Meal Scheme.

Dear Sushil,

As you are aware that the Supreme Court has ordered (order dated 28th November 2001) the government to serve cooked mid day meals in every government and government aided primary schools across the country.

I have received information from various states regarding the implementation of the scheme. This information shows that the scheme has been a non-started in many states.

I have attached a summary of the status of the scheme in all states. It shows that the scheme is fully running in only six states out of a total 33 states/union territories. Tamil Nadu, Pondicherry, Kerala, Gujarat, Rajasthan and Lakshwadeep are the only states which are complying with the Supreme Court's order. Barring Rajasthan, the scheme was running in other five states even before the Supreme Court order. So in effect only one state has followed the Supreme Court directions till today.

There are a few states which are providing cooked meals in certain pockets or districts. The list includes Karnataka, Madhya Pradesh, Chhatisgarh and Orissa among others (shown in the summary). So far only Karnataka and Andhra Pradesh have shown keenness to extend the scheme to the entire state. I have information from West Bengal and Goa that they are willing to start the scheme soon. No other states has responded positively so far. I have requested every state to comply with the order as soon as possible.

All other states are not following the Supreme Court orders. They are still providing dry-rations and have not taken any steps to implement the schemes.

A lot of complaints in implementing the scheme have also come to my notice. Many times it is due to improper guidelines of the scheme. For example, the Maharashtra guidelines puts the responsibility of serving cooked meals on the school authorities and also gives them the option of providing dry-rations. Mizoram has not made any provisions for transportation, cooks and fuel under the scheme. Such guidelines often discourage the implementing authorities to provide cooked meals.

Many NGOs and public networks from states, including Rajasthan, Karnataka, Maharashtra and Mizoram, have complained about the wastage of teaching time. This often happens when the guidelines put the responsibility of cooking the food on the schools, without providing any provisions for cooks and helpers. If the teaching time is used for cooking, the scheme will lose its focus of promoting the primary education in the country.

In States like Rajasthan and Karnataka, where the scheme has started recently, I have also received complaints regarding poor quality of food grains, water problem, lack of cleanliness, lack of kitchen rooms in the school etc.

Overall the scheme has not started in many states. Even where the scheme has started, it is facing problems due to lack of proper guidelines.

May I request you to review the scheme at your level for those states where the Supreme Court orders are not being followed? In particularly, the guidelines of every state need to be reviewed to ensure that:

1. Guidelines do not give any option for providing dry-rations
2. There should be provisions/ arrangements for kitchens, utensils, cooks, vegetables, pulses etc. in the guidelines. Teaching time should not be used for cooking.
3. Quality of grains supplied should be good.
4. Guidelines should take into account the regional food preferences in the state. Children should like the meals.
5. The nutrition content of mid day meals should be as ordered by the Supreme Court (minimum content of 300 calories and 8-12 grams of protein each day).
6. All government and government aided primary schools should be covered under the scheme.

The Supreme Court had ordered all states to start the scheme by 28 May 2002. Even after six months, many states are not showing any signs of

serving cooked mid day meals. This is a serious breach of the Supreme Court orders. Moreover many states have not supplied me with information on the status of Mid Day Meal Scheme in their states. I shall be grateful if you can send me state wise guidelines of the scheme.

With warm regards

N. C. Saxena
Centre for Equity Studies
C-17A, DDA flats,
Munirka,
New Delhi – 110067

Copy to:
Shri Arun Bhatnagar,
Secretary
Ministry of Food and Consumer Affairs

**Statement showing the status of Mid Day Meals in every state/union territory**

| States | Whether Cooked Meals are being served in the entire state | Both Government & Government aided schools are being covered? | Remarks |
|---|---|---|---|
| **Complying with the Orders on these two fronts** | | | |
| Gujarat | Yes | No information | The scheme has existed in the state since 1984. The scheme has been running well in government schools. They have in creased the coverage to grant-in-aid schools recently. |
| Pondicherry | Yes | Yes | One of those states which is fully comply ing with the Supreme Court order with respect to these two points. |
| Rajasthan | Yes | Yes | The State started the scheme after the Supreme Court order and is willing to implement it fully. It is facing problems in implementing the scheme for e.g. wastage of teaching time, quality of grains, lack of infrastructure etc. Full compliance of the order on these two fronts. |
| U.T. of Lakshwa-deep | Yes | Yes | One of those states which is fully |

| | | | |
|---|---|---|---|
| | | | complying with the Supreme Court order with respect to these two points. |
| Tamil Nadu | Yes | Yes | Tamil Nadu has been providing mid day meals for almost 20 years. It provides meals upto tenth class and covers all schools in the state. Full compliance of the Supreme Court order |
| Kerala | Yes | Yes | They are providing cooked mid day meals since 1995. Supreme Court orders being followed |
| Partial Compliance | | | |
| Mizoram | No | No | They have started the scheme on paper. Six out of eight districts are being covered. The responsibility of cooking the food is with the village committees and school heads. No transportation, fuel or vegetable costs are being given to schools. Plain rice is being served that also irregularly. No helpers or cooks from the government |
| Andaman & Nicobar | No | No | They are providing dry-rations. But they also provide snacks to every student worth Rs. 0.75 per day per student. |

| | | | |
|---|---|---|---|
| Madhya Pradesh | No | No. | Cooked mid day meals are being provided in tribal areas. Dry-rations in other areas. Supreme Court order not being followed completely. |
| Maharashtra | No | No | Covering just 1321 schools out of 74000 schools in the state. They have a plan to extend the scheme to other areas in a phased manner. But their guidelines have the options of providing dry-rations also. Not following the Supreme Court orders |
| Orissa | No | No | Cooked meals are being served in 157 blocks out of 314 blocks in the entire state. Not following the Supreme Court orders com pletely. |
| Karnataka | No | No | Karnataka is providing cooked meals in 7 out of 28 districts. They plan to extend the scheme to other districts as well but as of now the Supreme Court orders not being followed completely |
| Chattisgarh | No | No | They are providing cooked meals in 85 blocks. They are making plans of extending the scheme to the rest 61 districts. Supreme Court orders |

| | | | |
|---|---|---|---|
| | | | are not being followed completely. |
| Chandigarh | No | No | They are providing Sweet Matthis in around 47 schools. Plan to extend the scheme to other schools as well. Supreme Court orders not being following completely |
| No Compliance | | | |
| Andhra Pradesh | No | No | The state has an nounced that it is willing to start the scheme. But still no guidelines or govern ment orders have been sent out. It was announced that the scheme would start in November. During my visit in December I was informed that the scheme will start from January 2003. |
| UT of D & NH | No | No | Provides only dry-rations in primary schools. Supreme Curt orders are not being followed. |
| Nagaland | No | No | Provides only dry-rations in primary schools. Supreme Curt orders are not being followed. |
| Goa | No | No | Goa has informed the commissioners through a letter that they are working on the |

| | | | |
|---|---|---|---|
| | | | guidelines and will start the scheme in January. Supreme Court orders not being followed as of now. |
| Himachal Pradesh | No | No | HP has announced in their affidavit that it will start the scheme in half of their districts by December 2002. No further information has been supplied. They are violating the Supreme Court order as of now. |
| J&K | No | No | Provides only dry-rations in primary schools. Supreme Court orders not being followed. |
| Haryana | NO | No | Provides only dry-rations in primary schools. Supreme Court orders not being followed. |
| Jharkhand | No | No | Provides only dry-rations in primary schools. Supreme Court orders not being followed. |
| Bihar | No | No | Provides only dry-rations in primary schools. Supreme Court orders not being followed. |
| West Bengal | No | No | West Bengal has announced that they will be starting the scheme very soon. No guidelines have come |

| | | | |
|---|---|---|---|
| | | | out yet. Not complying with the Supreme Court orders as of now. |
| Assam | No | No | Provides only dry-rations in primary schools. Supreme Court orders not being followed. |
| Meghalaya | No | No | Provides only dry-rations in primary schools. Supreme Court orders not being followed. |
| Uttar Pradesh | No | No | Provides only dry-rations in primary schools. Supreme Court orders not being followed. |
| Manipur | No | No | Provides only dry-rations in primary schools. Supreme Court orders not being followed. |
| Punjab | No | No | Provides only dry-rations in primary schools. Supreme Court orders not being followed. |
| **No Information** | | | |
| Tripura | | | |
| UT of Daman & Diu | | | |
| Arunachal Pradesh | | | |
| Delhi | | | |

# ANNEXURE F

12.12.2002

To
Shri M. Shankar,
Secretary
Ministry of Rural Development,
Government of India.

Subject: Poor performance of SGRY during April-September 2002-03

Dear Shankar,
I have received the latest report from the Ministry of Rural Development on SGRY performance during the first half of the current fiscal (2002 – 03).

On the basis of that report I have looked at certain indicators such as utilization of funds available, utilization of foodgrains available etc. to analyse the performance of SGRY at all India level and in every state. A state wise table with indicator is attached with this letter.

All India indicators show that the scheme is not being implemented properly in many states.

## All India Financial Performance

***Low utilization of funds under the Scheme***
At all India level only 34.5 percent funds were utilized out of available Rs. 1966 crores under the first stream of SGRY. Even under the Second Stream just 38 percent of total available Rs. 1742 crores have been utilized.

Under the first stream there are 29 states/ union territories where utilization of funds as a percent of available funds is lower than 50 percent during the first half of the current fiscal. There are 11 states/ union territories that have not utilized funds at all.

The picture is very much similar under the second stream. There are 30 states with utilization lower than 50 percent and 7 states / union territories which have not utilized funds at all.

***Funds not being released in time***

Often there is delay in release of funds. There are only four states/ union territories for which 100 percent funds have been released by the central government (for both the streams together). Out of total 32 states and union territories, for only 12 states/ union territories more than 50 percent funds have been released from the centre's share.

States with less than 50 percent releases (includes both streams) from the centre's share include:

Jharkhand, West Bengal, Bihar, Assam, Arunachal Pradesh, Maharashtra, Gujrat, Manipur, Punjab, Meghalaya, Nagaland, Himachal Pradesh, Goa, Mizoram, Tripura, Pondicherry, Kerala, Sikkim, Daman & Diu, Lakshwadeep and A&N Island.

The attached table also shows that many state governments are also lacking behind in releasing their share of funds.

***All India Foodgrain Utilisation***

The performance of the scheme is even more worse when analysed according to utilization of foodgrains allocated under the SGRY.

***Foodgrains not being utilized under SGRY***

The utilization of foodgrains as a percent of total available foodgrains stands at 11 percent and 13 percent under first and second stream respectively. Since the report pertains to the first half of the year, utilization of grains should have been around 50 percent. Unfortunately it is much lower than that.

The list of states where the utilization of grains is less than 10 percent is as follows:

Jharkhand, Uttar Pradesh, Andhra Pradesh, Uttaranchal, Bihar, Madhya Pradesh, Gujarat, Himachal Pradesh, Lakshwadeep, Arunachal Pradesh, Daman & Diu, Manipur, A&N Islands, Meghalaya, Nagaland, Pondicherry, Goa, Sikkim, D&N Haveli, J&K Tripura, Mizoram.

The report also shows that in many states the central government has still not authorized the quota of allocated grains for states. The all India figures for authorized grains is at 56 percent of allocated grains (both streams together for 202-03). The central government should have authorized the entire allocation by now. According to the reports there are only 6 states for which the authorization of foodgrains as a percent of allocated grains is more than 80 percent.

***States are not lifting their grains***

States have also been very slow in lifting their authorized share. At the all India level, only 46 percent grains have been lifted out of total authorized 2511159 tonnes of foodgrains for both the stream together. Barring Maharashtra and Assam, no other state has lifted its entire quota of authorized during April-September 2002-03. In fact, there are 15 states, which have not picked up any grain under any stream of SGRY.

These indicators suggest that foodgrains are not being utilized properly under the SGRY scheme. Foodgrains form a major component of wages under the SGRY guidelines. Hence there should be full utilization of available foodgrains, for the benefit of labour working under the scheme. I have separately written to all states with poor indicators. I have requested them to utilize available resources to the maximum. So hereby I also request you to review the progress so that:

1. Foodgrains are utilized by states for implementing the scheme. So far it seems that foodgrains are not being used fully.

2. Foodgrains and funds are released swiftly and on time, so that state governments should not find problems in accessing to resources allotted to them under the scheme.

3. State governments utilize entire allocation of funds and foodgrains under the scheme.

4. State government's release their share of funds in time.

I shall be grateful if instructions issued from the Ministry, copies of monitoring, review and evaluation reports, and monthly information on SGRY is sent to me from time to time. You may also send them to me through the e-mail at:

nareshsaxena@hotmail.com and ncsaxena@vsnl.com.

With warm regards,

N.C. Saxena
Centre for Equity Studies
C-17A, DDA Flats,
Munirka,
New Delhi - 110067

# THIRD REPORT OF THE COMMISSIONER (DR. N. C. SAXENA)

DATED: March 1, 2003

**Writ Petition (Civil) 196 of 2001**
**(PUCL vs Union of India & Others)**

# Third Report of the Commissioner

THE RIGHT TO FOOD, TWO YEARS ON

**N. C. Saxena**
**Commissioner of the Supreme Court**

1 April, 2003

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## THE RIGHT TO FOOD, TWO YEARS ON

### 1. INTRODUCTION

Two years have passed since Writ Petition (Civil) 196 of 2001 was submitted by the People's Union for Civil Liberties (Rajasthan). This is a good time to review the situation and take stock of what has been achieved in addressing the core issues raised in the petition, particularly the need for swift action to prevent hunger and starvation.

I submit this review with a sense of urgency. The experience so far indicates that the intervention of the court in this matter is potentially effective. Some useful orders have been passed, and some positive steps have been taken by the respondents. For instance, many state governments have introduced cooked mid-day meals in primary schools, or are in the process of doing so. Grain offtake under the public distribution system and related schemes has substantially increased. And the central government has recently announced a major increase in the coverage of Antyodaya Anna Yojana, a programme of food-based social security for the destitute. Yet, these initiatives have only made a small impact in the massive problem of chronic hunger. Today, India remains one of the most undernourished countries in the world, with about half of all children suffering from undernutrition. The situation is all the more intolerable as it is happening in the shadow of gigantic food stocks. There is a catastrophic failure to protect the fundamental right to life, enshrined in Article 21 of the Constitution.

Behind this failure is an overarching lack of state commitment to the prevention of hunger and starvation. The elimination of chronic hunger does not get anything like the priority it deserves in policy planning and budget allocations. One symptom of this is the routine violation of Supreme Court's orders by the respondent governments. The fact that many state governments are yet to introduce cooked mid-day meals in primary schools, almost a year after the deadline set by the court has lapsed, is an example. In this context, it may be appropriate to refer to Article 47 of the Constitution (Directive Principles), which urges the state to "*regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties*". This has simply not happened.

This situation calls both for further directions from the court, and for stronger mechanisms to monitor and enforce the implementation of the court's orders. As mentioned earlier, experience shows that the intervention of the court can make a difference. However, the implementa-

tion of court orders has varied a great deal between different states. In the worst cases (e.g. Bihar and Uttar Pradesh), there has been virtually no response from the concerned governments. Thus, stronger accountability mechanisms are required. I shall end this report with a few suggestions to this effect, but the matter is likely to require further, sustained attention from the court in the months to come.

With these general remarks, I proceed to review the implementation of earlier orders. This review builds not only on secondary data and extensive correspondence with high-level officials of the respondent governments, but also on first-hand experience of the situation in a number of states. During the past twelve months, I have been privileged to make extended field visits to several states, and to discuss the issues with a wide range of government officials, citizens' organisations, and concerned people. The more I learn, the more concerned I feel about the food situation in India. This report is an attempt to share some of these concerns, and to present some constructive recommendations.

## 2. A BRIEF "HISTORY" OF THE CASE

Writ Petition (Civil) 196 of 2001 was submitted in April 2001 by the People's Union for Civil Liberties (Rajasthan). The petition essentially demands that the country's gigantic food stocks should be used without delay to prevent starvation and hunger. In the petition and subsequent deliberations, the petitioner has argued that the best means of preventing hunger is a combination of (a) employment guarantee for the able-bodied, and (b) social security arrangements for the destitute. The petition also draws attention to the crisis of livelihood in drought-affected areas and asks for a massive expansion of relief measures in these areas.

In their initial response to this petition, the state governments submitted detailed affidavits spelling out the steps they had taken to prevent starvation.[1] Most of these initial submissions focused on various *food-related schemes* aimed at providing food security to the citizens, such as the targeted public distribution system (TPDS), the Integrated Child Development Scheme (ICDS), and the Antyodaya Anna Yojana (AYY). The petitioner, however, pointed out that many of these schemes are poorly implemented, sometimes even non-functional. Following on this, the Hon'ble Supreme Court passed a significant interim order on 28 November 2001, aimed at a fuller implementation of these food-related schemes. The order effectively has three components. First, the order

[1] Throughout this report, "state governments" should be read as "state governments and governments of Union Territories".

effectively converts the benefits of eight food-related schemes (see below, section 3) into legal entitlements. Second, the order directs all state governments to introduce cooked mid-day meals in all government and government-assisted primary schools within six months. Third, the order includes further direction to ensure the wide dissemination of information relating to the schemes in question.

Since then, the attention of the court has concentrated largely on issues relating to the implementation of the interim order of 28 November, 2001. It is important to note, however, that the food-related schemes covered by this order have intrinsic limitations, and that much bolder intervention is required to deal with the problem of endemic hunger in India. It is in this spirit that the original petition had made a case for the introduction of an all-India "employment guarantee scheme", and for permanent social security arrangements for destitute households. The court should not lose sight of these fundamental pleas, even as it gets involved in issues relating to the implementation of the interim order of 28 November, 2001.

On 8 May, 2002, the Supreme Court passed an order containing directions on better implementation of the Sampoorna Grameen Rozgar Yojana (SGRY), and also empowering gram panchayats and gram sabhas to take active part in this process as well as in the monitoring of food-related schemes. This order also nominated Mr. S. R. Sankaran and myself as Commissioners of the court, for the purpose of monitoring the court orders and seeking redressal where appropriate. Mr. Sankaran, unfortunately, was unable to accept this invitation; I shall come back, further on, to the need for a second Commissioner, as the task assigned to me is too vast to be effectively discharged by a single person.

On 29 October, 2002, an order was passed which clarified that the chief secretaries were responsible for implementing the orders of the court, and that they would be held responsible in particular for any confirmed starvation deaths within their respective states.

Apart from the petition, both the petitioner and the respondents have filed a number of Interim Applications. I have dealt with many of the issues that have been raised in various applications, but have gone into any application in detail.

The preceding summary is not a comprehensive account of the case. I have focused on the essential milestones, as a prelude to the evaluation below. Before concluding this summary, I wish to reiterate the need for

the court to give adequate consideration, without delay, to the fundamental pleas contained in the original petition. The interim orders passed so far have considerable value in helping to expand and improve existing food security schemes. Ultimately, however, much more is required to address the massive problem of chronic hunger in India with adequate breadth. This is where some of the prayers contained in the original petition, particularly those relating to guaranteed employment and social security, come into play.

## 3. STATUS OF FOOD-RELATED SCHEMES

I proceed with a review of the food-related schemes covered by the interim order of 28 November, 2001. It may be recalled that the order covered eight specific schemes, namely: Mid-Day Meal Scheme (MDMS); the Targeted Public Distribution System (TPDS); Antyodaya Anna Yojana (AAY); Annapurna; Integrated Child Development Scheme (ICDS); National Old Age Pension Scheme (NOAPS); National Family Benefit Scheme (NFBS); National Maternity Benefit Scheme (NMBS).

Before examining specific schemes, it may be useful to recall some general features of food security policy in India. The table below presents recent figures on foodgrain offtake and the "food subsidy":

**TABLE 1:**
**Offtake of foodgrain from central pool (in million tonnes)**

| | **1996 -97** | **1997 -98** | **1998 -99** | **1999 -00** | **2000 -01** | **2001 -02** | **2002 -03*** |
|---|---|---|---|---|---|---|---|
| Offtake through ration shops | 19.66 | 16.98 | 18.69 | 16.97 | 11.67 | 12.14 | 11.9 |
| Offtake through other beneficiary schemes | NA | 2.08 | 1.36 | 1.53 | 3.23 | 8.86 | 9.87 |
| **Sub-total** | **19.66** | **19.06** | **20.5** | **18.5** | **14.9** | **21.0** | **20.96** |
| Open market sale | | 0.06 | 0.68 | 4.55 | 1.49 | 5.6 | 4.16 |
| Exports | | 0 | 0 | 0 | 1.49 | 4.7 | 9.68 |
| **Total** | | **19.12** | **20.73** | **23.05** | **18.21** | **31.3** | **34.8** |
| **Food subsidy** (Rs crore) | 6066 | 7900 | 9100 | 9434 | 12060 | 17612 | 24000 |

* Upto December 2002

It may be observed that much of the recent reduction in stocks is due to a surge in exports (at about the BPL price), leading to an accusation that the Government of India is feeding the poor (if not the cattle) of other countries, instead of feeding the poor at home. It is also worth noting that India's food system operates with a huge subsidy from the exchequer (close to Rs 30,000 for the current year, according to recent estimates). This subsidy is achieving very little, as thing stand, in terms of providing food security to the underprivileged, and there is an urgency to ensure that it is better used.

### 3.1. Mid-day Meals

As stated earlier, the court has directed all state governments to introduce cooked mid-day meals in all government and government-assisted primary schools within six months of 28 November, 2001. The importance of this direction cannot be overstated. Indeed, earlier experience (notably in Tamil Nadu) demonstrates that nutritious mid-day meals at school can be a highly effective way of protecting children from hunger. Mid-day meals also boost school attendance, especially among girls. Further, mid-day meals are not very expensive.

As far as the implementation of the court order is concerned, there are both positive and negative aspects to report. On the positive side, cooked mid-day meals are firmly on their way to being introduced throughout the country. As per recent submissions of the relevant governments, mid-day meals being implemented fully in Andhra Pradesh, Gujarat, Kerala, Rajasthan, Tamil Nadu, and in substantial parts of other states including Karnataka, Madhya Pradesh, Maharashtra and West Bengal. It is being partially implemented in Chattisgarh, Delhi, Orissa, and Punjab, but not implemented at all in Assam, Bihar, Jharkhand, Uttar Pradesh and Haryana.

Early evaluations of these programmes point to significant achievements, including substantial increases in school attendance as well as protecting children from extreme hunger in drought-affected areas. Having said this, there are also serious concerns, including the following:

1. Most states missed the six-month deadline for introducing mid-day meals.
2. Several states (notably Bihar, Jharkhand, and Uttar Pradesh) are yet to introduce mid-day meals.
3. In many of the complying states, the quality of the mid-day meal programme leaves much to be desired. Examples of qualitative lapses include:

(a) low nutritious content of the mid-day meal;
(b) the same menu being served day after day;
(c) lack of basic facilities such as cooking sheds and storage space;
(d) misappropriation of food or funds by vested interests. These are just a few examples.

I also wish to draw the attention of the court to the following:

1. The potential for using mid-day meals as a means of protecting children from undernutrition is vastly underutilized. Earlier experience shows that substantial results can be obtained, at relatively low cost, by combining nutritious mid-day meals with supplementary health and nutrition services such as deworming, health check-ups, vitamin supplementation, etc. This has been done to some extent in the more "active" states, such as Tamil Nadu and Kerala. There is a case for going much further in that direction.

2. There is also a strong case for the continued provision of cooked mid-day meals during school vacations, especially in drought-affected areas where the school meal is often the only square meal in the day for deprived children. Rajasthan has made a provision in its annual budget for the extension of mid-day meals in summer this year. It should be noted here that Tamil Nadu provides food on all days through the year.

3. There is enormous scope for qualitative improvements in the design and implementation of mid-day meal programmes.

**Box 1:**
**POOR COVERAGE OF MID-DAY MEALS, THE CASE OF MAHARASHTRA**

A survey of 91 villages in Maharashtra indicated that even in tribal talukas, cooked meals are being given in less than one third of the villages. The state government's own figures, dated 2.1.03, show that there were 9733 schools in the tribal areas, out of which cooked meals were being given only in 4041 schools. The worst picture is in the poorest district of Nandurbar where out of 1324 tribal schools only 70 schools were giving cooked food. Yeotmal had 564 tribal schools but only 15 supplied cooked food. In a recent submission, the government of Maharashtra has clarified that they have reports that food is being served in 17887 schools in Tribal, Rural and Urban areas. It is anyhow not clear as to how many schools are covered in the Tribal areas.

**Source: Survey conducted by Anna Adhikar Abhiyan**

I shall continue reporting on the status of mid-day meals from time to time. Considering both the strong potential of this scheme, and the limitations of present arrangements, it is essential for the court to keep a close watch on the progress of mid-day meals, and to deal firmly with any violations of its order. The first priority is to deal with states that are yet to initiate mid-day meals, almost 12 months after the deadline stipulated in the court order of 28 November, 2001. I urge the court to consider ways of holding these states (especially the hunger-ridden states of Bihar, Jharkhand and Uttar Pradesh accountable to this inexcusable lapse).

### 3.2. Targeted Public Distribution System

Turning to the targeted public distribution system (TPDS), there are many serious concerns. It may be recalled that the court has repeatedly directed state governments to ensure that households below the poverty line (so-called "BPL households") obtain their due entitlements from the public distribution system. As things stand, BPL households are entitled to 35 kgs of grain per month at subsidized prices. This represents about half of the grain requirement of an average household, and it is potentially a significant step towards food security. However, these entitlements have been undermined in four different ways.

First, the "BPL list" (the list of households considered to be below the poverty line) is highly unreliable. The selection procedure is defective, and often misused. As a result, many poor households do not have a BPL card.

Second, offtake levels are low. Only half of the grain allocated by the central government for the PDS is actually lifted from the FCI godowns. In the most hunger-prone states, where the need for a well-functioning PDS is particularly acute, offtake performance is extremely low, e.g. 29% in Jharkhand, 26% in Orissa, 23% in Uttar Pradesh, 15% in Bihar, 14% in Chattisgarh.[2] The causes of low offtake call for urgent investigation and action.

Third, a substantial part of the food lifted from FCI godown is appropriated by vested interests and never reaches the intended households. According to recent estimates published in the report of the High-Level Committee on Long Term Grain Policy (also known as the "Abhijit Sen Committee"), all-India "leakages" from the public distribution system

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[2] Calculated from Food Ministry data presented in *Monthly Foodgrain Bulletin*. The reference period is April-October 2002.

in 1999-2000 were around 20% for rice and 48% for wheat. The estimated leakages are as high as 60% for rice and 71% for wheat in Bihar, 45% for rice and 59% for wheat in Uttar Pradesh, and 47% for rice and 61% for wheat in Madhya Pradesh.[3]

Finally, issue prices have been raised to the extent that in many areas grain prices at PDS shops are not much below the corresponding market prices, even for BPL households. This means that while the quantities released may look large, the actual subsidy enjoyed by the consumer is quite small.

In short, the public distribution system is in a dismal condition, to the extent that it has ceased to mean much to the poor in large parts of the country (though there are important exceptions to this general pattern, notably in the southern states). To illustrate, in a recent field visit to Orissa I found that (a) PDS shops opened only on one or two days in a month; (b) people were refused grain if they came the following month to lift the backlog; (c) many poor families in the border villages of Keonjhar were denied facilities of BPL rations; (d) in one tribal village, none of the families had received any grain after 2000.

The failures of the PDS cannot be addressed through minor reforms combined with "business as usual". It calls for radical reform, based on in-depth examination of the prevailing defects of the system. This is primarily a matter of policy, but some aspects of the present failure of the public distribution system, I feel, also call for judicial intervention. I am thinking particularly of the ongoing drive to revise the "BPL list", which involves a drastic reduction in the coverage of the public distribution system, based on a flawed methodology. I would urge the court to constitute an expert committee to look into this issue, and related matters, without delay.

### 3.3. Antyodaya Anna Yojana

The Antyodaya Anna Yojana (AAY) is a programme of food-based social security for destitute households. It involves the identification of destitute households through local household surveys and "panchayati raj institutions" (PRIs), and the distribution of special ration cards to these households. These ration cards give destitute households special entitlements in the public distribution system: currently 35 kg of grain at highly subsidized prices (Rs 2/kg for wheat and Rs 3/kg for rice).

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[3] *Report of the High Level Committee on Long-Term Grain Policy* (Ministry of Consumer Affairs, Food & Public Distribution), page 158.

## Box 2:
## SOME SUGGESTED OPERATIONAL REFORMS OF THE PDS

1. The poor should be permitted to buy in instalments. This is already permissible in principle, but in practice the ration shops routinely fail to open even once a week in rural areas. Even when they are open, they discourage buying in instalments, for their own reasons.
2. The quality of foodgrain supplied through the PDS leaves much to be desired. The problem has arisen partly due to relaxed specification of quality during procurement. Such relaxations need to be avoided in the future in the interest of a well managed public distribution system. If any state government requests for relaxation of quality norms, this should be invariably accompanied by an appropriate price reduction besides exemption from statutory state levies.
3. Half the stock of FCI is at least two years old, 30% between 2 to 4 years old, and some grain as old as 16 years. One should restore consumer confidence in the quality of public stocks by segregating for early commercial disposal all old and relaxed quality grain from the Central Pool and from the PDS, as suggested by the Sen Committee.
4. The Fair Price Shops should be permitted to sell all commodities (other than rice and wheat) at full market prices through PDS outlets so as to ensure their economic viability. This is easier said than done, as most shopkeepers have been appointed on patronage basis, with little proven qualities of enterprise. The PDS shopkeepers are manipulators, not entrepreneurs, and certainly not committed to the interests of the poor, or driven by markets. It would be better to give these shops to already well established shops, than to relatives of politicians or those who can bribe the decision makers.
5. There is lack of infrastructure and shortage of funds with government parastatals in most states except the few in west and south. GOI should ensure that adequate infrastructural capacity is available at the district and block levels, otherwise wasting scarce resources through leakages helps only contractors and corrupt government staff, and does not in any way help the poor.
6. A drive should be launched to weed out ghost ration cards and check that all poor people have ration cards with them. Even in urban areas the poorest may have been left out of the safety net programmes. It was observed me in Maharashtra that the homeless have not been given ration cards, although they have been living on the footpath or unrecognised slums for years. Many of them may be even eligible for Antyodaya cards. Similarly migrant population is left out, although they may be living for more than 3 months continuously at a place.
7. In most states self-help groups are emerging as a viable unit of action. These could be persuaded to run food banks, and can be given food loans by government, to be returned at the time of the crop.
8. Although GoI has permitted NGOs to run food based schemes, in actual practice very few states are using the expertise and commitment of the civil society in formulating and implementing food for work or other such schemes. It would be better if this is monitored and best practices publicized, so that reluctant states may also be persuaded to involve the NGOs in this task.

Preliminary evaluations and field reports suggest that the scheme is doing reasonably well, especially in comparison with other parts of the public distribution system. Offtake levels have been quite high (close to 80% for India as a whole, in 2002-03), and the distribution of AAY cards seems to be reasonably fair. The main problem is that the coverage of AAY is very small – less than 5% of the rural population as things stand. In the light of this, a detailed proposal for the extension and improvement of AAY was submitted to the court by the petitioner in August 2002. The recommendations included an extension of AAY to 10% of the rural population, and wide-ranging suggestions for the consolidation of this programme. For instance, there was a recommendation that pre-specified "priority groups" (e.g. widows, and elderly persons, without support) should be given AAY cards as a matter of right, and that the programme should be put on a sustainable long-term footing.

In November 2002, the court asked the Union Government to respond to this proposal within four months. The matter has not come up since and I would urge the court to raise it without delay (I understand that this matter is to be taken up at the next hearing, on 8 April 2003). This is an important opportunity to consolidate social security arrangements for destitute households.

### 3.4. Integrated Child Development Scheme

There seems to have been little action as far as this scheme is concerned. This is unfortunate, since the provision of well-functioning *anganwadi* facilities in all villages is essential to protect small children from undernutrition. It is also worth recalling that the early years of life are of critical importance to a person's lifetime health and nutrition achievements. The interim order of 28 November 2001 states that an anganwadi should be available in "every habitation". I am not aware that any state has made serious efforts to implement this very important direction.[4] This is all the more deplorable as earlier experience in states such as Kerala and Tamil Nadu indicates that providing well-functioning anganwadis in every habitation is feasible, affordable and effective.

The continued neglect of small children (aged below 3) in the ICDS programme deserves special mention. Even though the government acknowledges the importance of improving the nutritional status of the under-three age group, only recently were efforts begun to target them in the ICDS. Most supplementation has primarily benefited the older

[4] In Uttar Pradesh, a recent study found that less than 5% of children under six had attended an anganwadi centre in the previous three months.

**Box 3:**

**SOLVING PROBLEMS BY IGNORING THEM:**
**Under-reporting of undernutrition in Maharashtra and Orissa**

District administration often under-reports the magnitude of severe malnutrition. According to the National Family Health Survey (NFHS –2 1998-99), 54% of children aged under three in Orissa are underweight, out of which 21% are severely malnourished. But the data collected by the state from districts shows that the percentage of severe malnutrition in the age group 0-3 years was only 3.8% in September 98, and came down further to less than 2% of the children weighed in February 2001! Similarly in Maharashtra, according to the data collected from the districts, only 0.74% of children in the tribal areas suffered from grade III and IV malnutrition. This is gross under-reporting as the NFHS data for 1998-99 showed that the percentage of malnourished children for tribal children was 35.4%. The state governments must not allow such a degree of bogus reporting.

**Box 4:**

**INVOLVE PEOPLE AND BUILD COHESIVE VILLAGE SOCIETIES**

At present the involvement of people in ICDS remains largely passive, with workers acting as 'doers' rather than change agents, and communities acting as recipients rather than participants. The repercussions of this lack of community involvement are multiple and seriously affect the possibility of the ICDS programme to achieve or sustain significant results. To begin with, the block team responsible for implementing the programme is not properly oriented on the roles and responsibilities of the communities. They typically see ICDS as another service delivery project with the villagers being the passive recipients. The community is not animated or mobilised. They know little about the purposes and objectives of the programme or their responsibility in the effort. As a result, the villagers are unable to carry out their first assignment, the selection of the AWW. By default, this important task is often done for the villagers by powerful people. Consequently, AWWs are chosen for the wrong reasons - political, caste, and monetary payments. This can result in the AWW being from outside the village, breaking one of the basic rules of the programme. Informal enquiries reveal that more than a third of the AWWs lived more than 5 kms from the villages where they worked. In plateau area of Kalahandi and other districts of poor communications, walking 5 kms can take more than two hours. Not only AWWs, but also no other field staff does touring, unless provided a vehicle. Many AWWs are of the view, "why should I do it if others are not doing it?" Besides, the person who got her appointed to this post as also other important people who can harass her do not expect her to work for the poor.

children, among whom mortality is lower and stunting is already established.

As many observers have reported, the GOI has been much more interested in expanding the ICDS programme than in ensuring that it achieves results. In their quest for "universalisation", they have favoured quantity over quality. That is, they are more interested in covering larger and larger populations than in reducing undernutrition rates.

While ICDS was eventually able to reach 80 percent of the development blocks in the country, it had no mechanisms to ensure that its services and supplemental food actually reached those most in need. In addition, workers were inadequately trained and were overextended, and the programme's outreach, health, and educational components were often neglected.

### 3.5. Other Schemes

As far as other schemes are concerned, there is relatively little to report. In most states, these schemes have a small coverage, are underfunded, and their implementation leaves much to be desired. Further, there is little sign of improvement on this front during the last two years, in spite of the intervention of the court. A brief scheme-wise assessment is presented below.

*National Old Age Pension Scheme* (NOAPS): Among social security measures taken by the Union government, this is among the most important and effective programmes. Pensions target some of the most vulnerable people including the aged destitute, widows and the disabled. Its implementation is better than that of many other schemes. The chief problem of the scheme is its low coverage. When the number of pensions was doubled for the KBK region of Orissa in 1998, it was observed that it really brought down the number of hunger deaths, or desertions of old people.

Other problems include corruption in the selection of beneficiaries; petty officials often retain passbooks of beneficiaries; untimely payment of pensions; and very low level of pension payment in most states. The amount needs to be increased to at least Rs 250 per month, and the number of pensioners should be doubled for the 100 poorest districts of India.

*Annapurna*: This scheme is essentially supposed to provide 10 kg of grain per month, free of cost, to persons who are eligible for an old-age pension but not actually receiving one. Annapurna has a very small cov-

**Box 5:**

## PENSION SCHEMES IN JEOPARDY DUE TO REDUCED COMMITMENT BY THE GOVERNMENT OF INDIA

Unfortunately GoI has recently transferred the old-age pension scheme to the state sector. This has several implications. First, earlier as Centrally Sponsored Scheme the states used to get the entire money from GOI (Ministry of Rural Development) as grant. Now most states will get the same amount in the ratio of 70% loan and 30% grant, which will reduce States' commitment to the scheme. Second, earlier the Ministry of RD used to transfer the amount straight to the bank account of the DRDA in the districts, and this ensured quick availability at the district level. Now, the districts will get the same amount from the state Finance Department, and fiscally weak states may often not be able to release the amount in time. Third, there is a likelihood of states diverting the fund to other pressing issues. Fourthly, as the scheme is not being funded by GoI Ministry there is no monitoring by GoI, and cases of delay or harassment might increase. And lastly, GOI used to give extra allocation of 4% of the pension amount to cover administrative cost that was used in the districts for supervision, hiring vehicles, etc. The states have stopped doing that with the result there is not even money in the districts for buying stationery, registers etc. for maintenance of accounts.

All this would mean delay in disbursement in the field. There are already reports of such delays in the disbursement of two other schemes, which were associated with the National Old Age Pension Scheme – the Maternity Benefit and the Family Benefit Schemes.

erage and does not appear to be well-conceived. Yet, it is disturbing to hear that some states (e.g. Madhya Pradesh) have abruptly discontinued the scheme, without making alternative arrangements to support the eligible households. The consequences are potentially devastating for the concerned households, given that many of them had meanwhile come to depend on the Annapurna scheme for their survival. This is a very serious matter and I propose to seek further clarifications on this from all state governments shortly. Care should be taken to ensure that the scheme is not removed without putting alternate social security arrangements in place.

Many states have failed to identify the complete number fixed by GOI for this scheme. The state government of Maharashtra admitted that it had been able to identify only 8,000 people in this category against a target of 60,000 set by GOI. As the population of above 65 years in the state is about 45 lakhs, out of which surely 12 lakhs would be below the

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poverty line, the contention of the state government that there are no eligible candidates for this scheme cannot be believed.

*National Family Benefit Scheme* (NFBS): The scheme provides compensation to the family in the event of untimely and unnatural death of the primary breadwinner of the family. Information about the scheme is not widely known. Further, families have to go through an elaborate procedure to avail the benefit of the scheme. The scheme has also failed in a sense that it reaches a small proportion of potential beneficiaries.

**Box 6:**

**MISSING BABIES – The case of paltry efforts for massive needs**

In Maharashtra, only 30,000 women receive any benefit from NMBS in a year, against about 30 lakh new births in the state. Out of 30 lakh, at least 3 to 4 lakh births would satisfy eligibility conditions. Thus the state must launch a campaign, and reach every pregnant and eligible mother for the cash benefit.

Fund allocation in Keonjhar district was so meagre compared to the requirement that there is a four year backlog. According to the district figures roughly 25,000 births take place in a year. If half of them are BPL families, the scheme should be benefiting 12,500 women, against this number only 1818 women were given the assistance during 2001-02 under the scheme.

*National Maternity Benefit Scheme* (NMBS): The scheme provides Rs. 500 for the first two live births as maternity benefit to women below poverty line. This scheme, like the family benefit scheme, is grossly under funded.

## 4. FURTHER ISSUES

Let me now comment briefly on a few general issues that have emerged from the experience so far, and that call for urgent consideration.

### 4.1. The Employment Issue

To start with, I would like to draw the attention of the court to the fact that none of the above-mentioned scheme deals with employment. Yet, assured employment at a living wage is the best protection against hunger. This makes it important to consider the petitioner's plea for an all-India "employment guarantee" programme, building on Maharashtra's experience in this regard.

Far from moving in that direction, central and state governments have shown little commitment to rural employment in recent years. In fact, employment generation under rural public works programme has declined year after year in the late 1990s. An apparent reversal of this decline occurred in August 2001, when the Union Government announced a new programme of rural employment generation, the Sampoorna Grameen Rozgar Yojana (SGRY), aimed at generating 100 crore person-days of employment per year. Unfortunately, the actual performance of this programme so far has not gone much beyond that of the earlier employment programmes it has replaced. Further, employment generation under SGRY has been highly uneven between different states, to the extent that in 2001-2 more than one third of the total foodgrain offtake under SGRY (including the "food for work" component) occurred in Andhra Pradesh, while offtake was close to nil in several states including **Bihar, Jharkhand, Maharashtra, and Tamil Nadu**. In the more deprived and hunger-ridden states, employment generation under SGRY is extremely limited. In other words, far from reversing the earlier trend of steep decline in rural employment generation, SGRY has been a medium of further decline in those states.

The implementation of SGRY has also been extremely uneven within states. The more deprived districts, and the more deprived areas within those districts, often ended up getting a very small share of SGRY funds, because it is politically or administratively expedient to spend the funds elsewhere. There are disturbing reports of a virtual absence of any SGRY work in many of the country's least developed districts. Work is often not given to those asking for it even if funds are lying unutilised, and workers cannot force the Government to give them work as no rights accrue from this scheme. Creating an effective right can help redress the situation. In the meanwhile, the court should consider directing all the states to utilise the funds available for SGRY.

The haphazard and arbitrary implementation of SGRY strengthens the case for considering an alternative approach based on the principle of "employment guarantee". Like earlier employment programmes, SGRY is a supply-driven programme where the allocation of work largely reflects political pressures, administrative convenience and related factors instead of the needs of poor people. In contrast, employment guarantee programmes are meant to be demand-driven, and this helps to match resources with needs. Even if it is deemed impractical to introduce a full-fledged employment guarantee at the all-India level, a step in that direction could be made in the form of employment being guaranteed in specific areas are within specific periods of the year.

## Box 7:
## HURDLES FOR SGRY FROM BUDGET PROCESS TO THE GROUND

In the budget allocation of the Rural Development Ministry for the year 2002-03, there was originally no provision for the cost of foodgrain, but it was provided through the supplementary grants. Similar procedure is being followed for 2003-04. This uncertainty leads to delays, and it would be better to provide for the food component at the Budget Estimate stage itself so as to avoid delays in payment of wages.

In flagrant violation of the guidelines, in many States projects are being executed by using excavators, trucks and tractors instead of more labour intensive approaches. This is being done with full knowledge of the senior officials. For example in one of the study in Krishna district – out of 54 works, excavators were employed in 40 cases. Poclaines (the trade name for a kind of earth excavator) are becoming the preferred machine for undertaking a variety of village works through all kinds of programmes from the point of view of the rich who own the machines and hire them out for public works. One Poclaine can displace 17x8 persons in an eight hour day (at 17 person-days per hour), whereas it costs Rs 800 to hire a Poclaine for an hour. The ideal policy should be to discourage its use even by construction Ministries, such as Railways and CPWD, and compensate them financially to build incentives for employing more manual labour. However, the reverse is happening. Not only labour is being displaced in the so-called employment oriented schemes, food meant for the poor is then sold in the market, thus distorting market for farmers.

The fudging of muster rolls and measurement books is very common resulting in huge loss of funds that could otherwise have been invested in building rural infrastructure. The list of workers along with the number of days they have been given jobs under SGRY should be compulsorily hung in each office of the Gram Panchayats and outside each school in the village.

When funds are released by DRDAs/Zilla Parishads to Blocks or Panchayats, a Press note should invariably be issued about the date and amount released to various offices. Publication in newspapers will improve transparency. Similarly, all departments getting SGRY funds should issue a Press statement about the dates of execution of works and the dates when payments were made to the workers. This will reduce complaints that payments to workers are often delayed. A monthly gazetteer should be published at the district level of all works with details of individual workers with number of days employed, and not simply number of man-days of employment created. This should be made available to all concerned. In addition, the entire information should be put on the website of the district and should be made available in the electronic form to the prominent NGOs of the district, who can then carry out spot checks.

### 4.2. Social Security for Destitute Households

One of the main concerns of the petitioner was that adequate social security arrangements should be put in place to protect destitute households from hunger. As stated earlier, the extension of the Antyodaya Anna Yojana (AAY) programme is a welcome step in that direction. However, the basic issue remains largely unresolved. The need is not for ad hoc, short-term schemes but for comprehensive and durable social security arrangements. In this connection I wish to reiterate that the Union Government's response to the proposal submitted by the petitioner, regarding the consolidation of the AAY programme, is long overdue. This programme is unlikely to be adequate on its own, for this purpose, but it does seem to have much potential as an important component of the required social security system. Further measures could be considered.

I also wish to draw the attention of the court to the fact that the entire problem of urban destitution remains largely unresolved. The urban destitute are highly vulnerable to extreme hunger, yet most of them are beyond the pale of the schemes reviewed in the preceding section. There is a need for creative initiatives in this field, and I do hope that the court will take this up in due course.

### 4.3. The BPL Imbroglio

As mentioned earlier, the BPL list is highly unreliable, partly because it is based on a flawed methodology and partly because of defective implementation of the BPL survey. The problem is likely to be exacerbated this year with the completion of the new BPL survey, which has been poorly planned and lacks basic safeguards against manipulation. The new survey also involves a highly questionable reduction in the number of households to be included on the BPL list.

These matters are quite complex and it would seem wise to refer the whole issue to an expert committee. In formulating the terms of reference of this committee, it is important to note that the BPL list was not initially meant to be used as a "targeting" device for the public distribution system. Rather, the BPL list was introduced in the context of other schemes, such as the Integrated Rural Development Programme, and later used on an ad hoc basis for PDS targeting. Given the sobering experience of BPL-based targeting, the committee should consider not only how to improve the methodology of the BPL survey, but also alternative eligibility criteria for the public distribution system. It should also consider the possibility of a "universal" public distribution system, as recommended by the High-Level Committee on Long Term Grain Policy, among others.

### 4.4. Drought-related Issues

This report would be incomplete without a mention of the severe drought which is affecting large parts of the country and threatening the survival of poor people in many states. Field reports suggest that many drought-affected areas are witnessing a major breakdown of livelihoods, and a surge in hunger and undernutrition. During the last two years, there have been periodic reports of starvation deaths in many areas (Kashipur in Orissa, Baran in Rajasthan, Palamau in Jharkhand, Shivpuri in Madhya Pradesh, Nandurbar in Maharashtra, Chandauli in Uttar Pradesh, to name a few), and there is a strong likelihood of a further wave of starvation deaths in the coming summer months if nothing is done to step up relief operations. For instance, according to a recent field report from Sheopur district in western Madhya Pradesh, drought-affected people in the district barely get one square meal a day and large-scale distress migration is taking place (as for livestock, the bulk of it is expected to perish during the summer).

In this connection, it is worth remembering that Writ Petition (Civil) 196 of 2001 initially came up in the context of a similar drought in Rajasthan. The petition drew attention to the destructive effects of the "labour ceilings" that had been imposed on participation in relief works, and prayed for open-ended provision of employment to drought-affected people, as per the Famine Code. These issues remain applicable today, in the context of this year's drought. Indeed, drastic ceilings have been imposed again on the extent of employment to be provided under relief works. As a result, there is fierce competition for employment on relief works in drought-affected areas, with the same destructive consequences as two years ago, including the frequent exclusion of poor households from relief works, large-scale migration of unemployed labourers, and bitter divisions in the rural society. It seems important to revive and uphold the principle of open-ended employment (without "ceilings") in drought-affected areas.

The main reason cited by the states for imposing these drastic ceilings is that they lack financial resources to provide more employment . However, The Hon'ble Supreme Court has already held that shortage of funds cannot excuse the failure to fulfil constitutional obligations (Paschim Bangal Khet Mazdoor Samity v State of W. Bengal (1996) 4 SCC 37"). In any case, this excuse is singularly inapplicable for the country as a whole, given the availability of gigantic food stocks.

The Union Government contributes to the cost of relief operations in the event of a calamity through the National Calamity Contingency

Fund (NCCF). Unfortunately, the effective utilisation of NCCF funds seems to have been held up by frequent disputes between central and state governments, and also by a lack of sense of urgency on both sides. In saying that they don't have the finances, the states have not justified why they have exhausted all avenues open to them. The central government, for its part, has been opaque about how it decides to allocate NCCF funds.

**4.5. Information and Accountability**

Before concluding, I wish to draw the attention of the court to the crucial role of information and public awareness for the success of all the initiatives we have considered. In my travels, I have been struck again and again by the disempowerment experienced in all walks of life by the rural poor due to lack of information. This applies in particular to food-related schemes, which cannot be expected to function unless the intended beneficiaries have a clear idea of their entitlements. To illustrate, BPL cardholders often do not know how much grain they are supposed to receive and at what price. In this situation it is hardly surprising that they often fail to obtain their due. Lack of information, in turn, is not an accident but often reflects a deliberate strategy to keep people in the dark on the part of vested interests. For instance, I am told that in some parts of Madhya Pradesh, BPL cardholders have not been informed of the fact that their entitlements have been raised from 25 to 35 kgs. The dealers take advantage of this situation by selling the difference in the open market.

In this connection, it may be recalled that the interim order of 28 November 2001 includes various directions aimed at enhancing people's awareness of entitlements. For instance, posters with the relevant information were to be displayed in all villages, and regular announcements were to be made on Doordarshan and All India Radio. Some steps in that direction have been taken, with good effect. For instance, occasional announcements on television and radio have helped to spread public awareness of food entitlements. However, these initiatives have fallen far short of what was envisaged in the interim order, and the order itself did not perhaps go far enough. There is a need for much more systematic efforts to spread information at all levels and make sure that people are aware of their entitlements.

Another aspect of the information issue is the need for a better monitoring system. As things stand, information on the performance of food-related schemes is often not available until months after the event, and this makes it harder to intervene in a timely manner where appropriate.

It would be useful to devise and develop a system whereby comprehensive information is submitted in real time by state governments, using a common format.

I take this opportunity to mention that the task that has been assigned to me, as Commissioner of the court, is colossal and cannot be effectively discharged by a single person. I am glad to say that my limited interventions have often produced useful results, but much more could be done if the required manpower and facilities were available. India is a vast country, and so is the canvas of this litigation. Ultimately, there is need for a correspondingly elaborate system of monitoring and redressal of the court's orders. I shall include some preliminary suggestions to this effect in the concluding section, but this matter is likely to require further attention in due course.

Going beyond the issue of information, there is also a need for stronger accountability, redressal and compensation mechanisms. As things stand, most people feel that they have nowhere to go in cases where they are deprived of their entitlements under the respective schemes. This is perhaps most evident in the case of the public distribution system, which has lent itself to rampant corruption for years without the victims being able to do much about it. But the pattern is a general one and also applies in other contexts, to various degrees.

This brings me to a final point that appears to me to be of major importance for the present endeavour of the court. If freedom from hunger is a basic right of all citizens, as argued by the petitioner, then robust redressal and compensation mechanisms ought to be in place to deal with instances where this right is violated. As things stand, such arrangements are sorely lacking. By and large, food entitlements are treated as a gracious gift of the state, and it is not considered important to punish the culprits or compensate the victims in the event where these entitlements are not realized. This neglect must be addressed if the right to food is to become a reality.

## 5. CONCLUDING RECOMMENDATIONS

In this report, I have reviewed the progress of the case and commented on a number of key issues connected with the implementation of interim orders. It is much easier to raise these issues than to find convincing answers to them. They cannot be resolved in one stroke, and are likely to call for sustained attention from the court in future proceedings. Meanwhile, let me suggest a few immediate steps:

**5.1. Mid-day Meals**

1. I advise the court to request state governments that have not complied with the order on mid day meals to submit affidavits explaining why mid-day meals are not being provided in all government and government-assisted primary schools, as per the interim order of 28 November 2001. Further, these governments should be firmly directed to initiate mid-day meals by early July (the beginning of the next school year) at the latest.

2. I advise the court to direct all state governments to continue providing mid-day meals during the summer vacations in drought-affected areas (and to consider doing the same in other areas also).

3. I advise the court to direct the states to ensure that the basic facilities for the programme are provided for including helpers, cooks, space for storage and cooking, etc.

**5.2. BPL Survey**

4. I recommend the appointment of an expert committee to re-examine the methodology of the "BPL survey", and the larger question of targeting in the public distribution system.

5. I suggest that until such time as the committee submits its report and the matter is resolved, the earlier BPL list should remain applicable.

6. In situations of drought and other calamities, relief should not be restricted to BPL households since many other households also tend to require support in such circumstances.

**5.3. Integrated Child Development Scheme**

7. States must be directed to increase the coverage of ICDS. It is not reaching enough children. For example, of the 158 million children in 0-6 age group, the programme reaches only 26 million - 16% of the total. This is a clear violation of the Hon'ble Supreme Court's orders.

8. Direct the states to have a special drive to cover poor children. ICDS is not reaching children in the poorest families. As in most low-income countries, malnutrition rates in India are highest among the poor. Consequently, ICDS should aim to give particular attention to the lowest income group.

9. As per the order of the court, anganwadis must be opened in all habitations. Special emphasis should be given to remote areas immediately.

10. The states should prepare a plan for reaching under-three children. Currently attendance of children under 3 years is very low - mothers are reluctant to send young children and anganwadi workers prefer to deal with older children (those in the 3-6 year age group), as they are easier to manage.

**5.4. Information Dissemination**

11. I request the court to direct all state governments, and the central government, to cooperate with me in the design of an integrated "monitoring and information system" (MIS), aimed at generating comprehensive and up-to-date information on food-related schemes on a continuous basis. This will greatly help in monitoring the progress of food-related schemes and identifying lapses in their implementation.

12. I also request the court to direct the central government to provide suitable financial resources for this purpose.

13. Each district should furnish information on the schemes in their websites of districts.

14. District level websites should provide information on each project sanctioned under SGRY with details including Name of the project, funds allotted, number of mandays to be created, and other relevant details.

15. Apart from putting information in the websites, information should also be placed in newspapers to enable verification.

16. I advise the court to issue further directions to ensure that people are aware of their entitlements under food-related schemes. These may include the following:

a. Weekly announcements on Doordarshan and All India Radio, for an initial period of six months.

b. Mandatory display of a new, updated poster in all ration shops, schools, panchayat bhawans, and health centres within two months.

c. Mandatory display, in all ration shops, schools, panchayat bhawans etc. of a permanent board giving detailed information on food entitlements under the public distribution system as well as on the corresponding redressal and compensation mechanisms.

### 5.5. Appointment of a Second Commissioner

17. I request the court to appoint one more commessioner, for the purpose of monitoring the implementation of the court's orders. It is impossible for a single person to do justice to all aspects of this matter. I suggest Mr. Harsh Mander (Country Director, ActionAid India) as co-Commissioner. I have worked with him for a long time and have complete faith in his abilities and commitment. It is important that the co-commissioners function well as a team. I am confident that Mr. Harsh Mander suits all these requirements and would do full justice to the job on hand.

### 5.6. Forthcoming Deliberations of the Court

18. I urge the court to bring the following issues within the ambit of its deliberations as soon as possible:

a. non-compliance of specific states with the interim order on mid-day meals;
b. response of the central government to the petitioner's proposal on Antyodaya Anna Yojana;
c. consolidation of social security arrangements for destitute households, including in urban areas;
d. the need for assured employment at a living wage, as a protection against hunger.

# FOURTH REPORT OF THE COMMISSIONERS

## SUMMARY REPORT OF THE COMMISSIONERS

### THE FOURTH REPORT OF THE COMMISSIONERS

### SUMMARY OF THE REPORT

This report is essentially on update an the third report of the Commissioners, submitted in April 2003. It focuses on compliance with earlier directions of the Honourable Court by the respondents, and present suggestions to consolidate these directions.

The report begins by taking note of the fact that the problem of hunger amidst plenty is still with us, virtually unabated. The Commissioners are particularly concerned to find that the Government of India has been exporting one million tonnes of grain every month during the last 15 months, against a background of endemic hunger at home. They stress the need for bolder intervention on the part of the Honourable Court.

The report stresses the links between the right to food, the right to work and the right to information. Promoting the right to work is an essential means of guaranteeing the right to food. The report suggests some preliminary directions in this regard. These include banning the use of labour-displacing machines on public employment programmes, and introducing an employment guarantee in at least 100 backward districts.

The right to information is also essential for the realisation of the right to food. Indeed, absence of transparency and accountability has severely undermined a whole range of food security schemes. The report urges the Hon'ble Court to assert that all documents pertaining to food and employment schemes should be treated as public documents, open to public scrutiny and accessible for consultation by any individual at any time.

Other major directions recommended by the Commissioners include the swift expansion of mid-day meals throughout the country, doubling of the coverage of social security pensions, restraint on grain exports, and bold measures to address the much-neglected problem of urban destitution.

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**SHEOPUR REPORT**

## SOURCES AND ACKNOWLEDGEMENT

This report draws on field reports and other submissions received from Adivasi Mukthi Sangathan (Madhya Pradesh), Subhashini Ali (All India Democratic Women's Association), Akal Sangharsh Samiti (Rajasthan), Dr Neeti Bai (Lok Chetna Samiti, Uttar Pradesh), Baiga Mahapanchayat (Madhya Pradesh), Bandhua Mukti Morcha, Dr. Jitendra Chaturvedi, Bikash Das (Committee for Legal Aid and Protection, Orissa), HARD (Shahdol, Madhya Pradesh), Sachin Jain, Azra Khan, Dhruv Kumar, Ghangra Visthapit Morcha (Uttar Pradesh), Jan Sangharsh Kendra (West Bengal), Kusum and Kanchuki (AIM, Lucknow), Mazdoor Kisan Shakti Sangathan (Rajasthan), Rajkishore Mishra (Kalahandi), Muthappa (Bangalore), Sudha Narayanan, Parivartan (Delhi), Biraj Patnaik, People's Union for Civil Liberties (Rajasthan), People's Vigilance Committee on Human Rights (Varanasi), Vandana Prasad, Sanjay Rai (Food First International Action Netwok, U.P.), V.B. Rawat, Dr. Mihir Shah (Samaj Pragati Sahyog, Madhya Pradesh), Dr. Singh (SAMBHAV, Gwalior), Jai Singh (Ekta Parishad, Madhya Pradesh), Spandan Samaj Seva Samiti (Madhya Pradesh), Sanjay Vijayvergia, Veda Zachariah, various regional offices of ActionAid India, and villagers of Sundargarh district (Orissa).

The report also draws on (a) information presented at recent public hearings in Chittorgarh (Rajasthan), Dindori (Madhya Pradesh), Kalahandi (Orissa), Sendwa (Madhya Pradesh), Shivpuri (Madhya Pradesh) and elsewhere; (b) communications with the Commissioner's advisers in different states; (c) extensive correspondence with government officials of the central and state governments; (d) a detailed investigation of food-related schemes in Sheopur district (Madhya Pradesh) undertaken by a team sent by the Commissioners; and (e) a recent visit to Lucknow and surrounding districts by Dr. N.C. Saxena. (f) interactions with the support group, Right to Food Campaign.

We are grateful to Shonali Sen and Navjyoti for their able assistance in preparing the report.

## 1. PREAMBLE

1.1. We begin by drawing the attention of the Honourable Court to the fact that the problem of "hunger amidst plenty" is still with us, virtually unabated. It is not that the Court's orders have failed to have any impact. In many cases they have led to substantial improvements in specific aspects of the food system. However, the orders passed so far are not equal to the task of guaranteeing freedom from hunger in India, and even these orders have been routinely violated. Bolder action is needed if the right to food is to become a reality.

1.2. The recently published ***Human Development Report*** *2003* confirms that **India is one of the most undernourished countries in the world**. For instance, the proportion of undernourished children is as high as 47% in India. In this respect India fares worse than any other county in the world, **except for Bangladesh and Nepal**. Every one of these millions of undernourished children stands before us as a telling reminder of the country's failure to guarantee the right to food. The field reports submitted to us from time to time by citizens' organisations around the country also confirm that endemic hunger and extreme starvation continue to haunt the land.

1.3. The mountains of food too, are still with us. The stocks of foodgrains held by the Food Corporation of India have declined from 62 million tonnes in July 2002 to 35 million tonnes in July 2003. But even the reduced stocks are nearly twice as large as the buffer stocks officially required in an average month. Aside from causing much wastage of grain, these excess stocks absorb enormous financial resources that could be used to assist poor families.[1] Further, the reduction in stocks is achieved in substantial measure by *exporting* enormous quantities grain. Between April 2002 and June 2003, India exported more than 15 million tonnes of wheat and rice, i.e. **exports of one million tonnes per month** on average.[2] To put it another way, the monthly outflow is as large as 20 kgs per BPL family per month. Moreover this surge in ex-

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[1] According to the Food Ministry, the carrying cost of grains is close to Rs. 2,971 per tonne per year, implying a total cost of Rs 10,398 crores for holding 35 million tonnes (Monthly Foodgrain Bulletin July 2003). A recent survey of stocks held in Punjab found that 7.5 lakh tonnes of grain was of such poor quality that 70% of it would have to be destroyed, leading to a loss of Rs 750 crores (Economic Times, 24 July 2003).

[2] Monthly Bulletin Report, May and June 2003, Ministry of Food and Consumer Affairs, New Delhi.

ports seems unnecessary at a time when the country is holding gigantic reserves of foreign exchange. **The energy and grit shown by the government in exporting food contrasts sharply with its continued passivity in dealing with chronic hunger at home**.

1.4. We are also constrained to mention that the **next few months may well turn out to be a period of intensified hunger in large parts of India**. The drought has come to an end, and this hearing (on 19 August, 2003) takes place in the middle of an excellent monsoon in most of the country. However, the next crop will not be ripe until October or even November. In the intervening period, poor families will have to cope with the discontinuation of relief works, meagre employment opportunities in the private sector, an adverse epidemiological environment, and the heavy sacrifices required to grow the *kharif* crop. There is much demographic evidence that in India, **excess mortality associated with droughts typically peaks during the monsoon months immediately *following* the drought**.[3] **The same pattern is likely to apply this year, if nothing is done to prevent widespread hunger**.

1.5. All this points to the need for continuing the search for orders that would adequately solve the problem at hand. Earlier orders have helped, to some extent, in streamlining the government's existing food schemes (and much more can be done in this regard), but it should be clear that ultimately much more is required to put in place an effective guarantee of freedom from hunger for all citizens. In this connection, we wish to draw attention to the petitioner's plea for a national "employment guarantee". Even guaranteed employment is unlikely to ensure the right to food on its own (for instance, additional provisions would also be required to protect young children, and those unable to work), but this step would at least make a substantial contribution to the goal of freedom from hunger. We urge the Hon'ble Court to ensure that these larger issues receive detailed consideration as soon as possible. Meanwhile, we cover in this report a number of other urgent issues, concerned mainly with the implementation of earlier orders.

## 2. UPDATE OF LATEST ISSUES

In our last report, submitted in April 2003, we presented an overview of the state of crucial food-related schemes. As a follow-up, the "update" below covers some recent developments of interest.

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[3] See Dyson, T., and O'Grada, C. (eds.) (2002) *Famine Demography* (Oxford: Oxford University Press).

## 2.1. Mid-day Meals

2.1.1. The map given on page 1A a conveys the reach of cooked mid-day meals in India today. According to recent data supplied by the Department of Elementary Education and Literacy, **50 million children are covered**. This is a substantial achievement (**indeed, it is by far the largest mid-day meal programme in the world**), yet the coverage is still far from universal. We note with particular concern that mid-day meals have not been initiated in Bihar, Jharkhand, and Uttar Pradesh, three states with abysmal levels of schooling and nutrition. We shall return to this.

2.1.2. Much has been learnt from a recent field survey of mid-day meals initiated by the Centre for Equity Studies, New Delhi.[4] The survey suggests that mid-day meals have made a promising start around the country. In each of the three sample areas (three districts each in Chhattisgarh, Rajasthan, and north Karnataka), mid-day meals are being served regularly in all primary schools. However, the survey also draws attention to the fact that the **achievements of mid-day meals have been seriously compromised, if not defeated, by inadequate quality and low budgets. There is an urgent need for better infrastructure (e.g. cooking sheds in all the schools), improved facilities (e.g. safe drinking water everywhere), closer monitoring (e.g. regular inspections), and other quality safeguards.**

2.1.3. Even more importantly, the content of the mid-day meals needs to be improved if school lunches are to have a significant impact on child nutrition. Indeed, the same survey draws attention to vast, unused opportunities for enhancing children's health by providing nutritious food at school. Linking mid-day meals with related inputs such as deworming, micronutrient supplementation, and education on improving hygiene can further enhance the health effects of this scheme. These opportunities have been used to some extent in Tamil Nadu, Karnataka, Kerala, Gujarat and a few other states. However, in most states the content of mid-day meals leaves much to be desired, and mid-day meals are divorced from the larger goal of improving children's nutrition and health. In Rajasthan, for instance, G*hoogri* (a spartan gruel of boiled wheat and *gur*) is being served day after day, and this monotonous menu has started to provoke adverse reactions among children, aside from causing occasional stomachaches.

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[4] "The Future of Mid-day Meals", by Jean Drèze and Aparajita Goyal, *Frontline*, 15 August 2003.

2.1.4. In short, qualitative improvements in mid-day meal programmes are urgently required. This, in turn, calls for adequate financial resources. To illustrate, Rajasthan spends only 50 paise per child per day on mid-day meals (not counting the cost of grain, which is supplied free of cost by the central government). **Shoestring programmes of this kind miss a vital opportunity to enhance children's nutrition in a highly cost-effective manner.**

2.1.5. Some states claim that they lack financial resources to introduce or improve mid-day meal programmes. However, close examination of state budgets does not substantiate this claim. For instance, in 2001-02 the states received roughly Rs. 1, 35, 000 crores from the three central sources alone. Further, **in the case of resource-rich states like Delhi, there is really no excuse for failing to implement the order in full**, without delay. Other states also have adequate resources that could be used to implement the Order without delay. The state of Uttar Pradesh collected an extra Rs. 2,000 crores in the last financial year in taxes alone. Bihar failed to utilise as much as Rs. 1,048 crores in just four development schemes during the Ninth Plan. Unutilised resources such as these can easily be used for a good quality mid-day meal programme. It seems therefore that **non-implementation is more a result of administrative and political inertia rather than a lack of funds. State governments should not be allowed to evade their responsibility to find resources even if it means impositions of special cess, taxes etc.**

2.1.6. Time frame for mid-day meals: In its last order (8 May 2003), the bench directed Bihar to implement the scheme in at-least ten districts and in Uttar Pradesh, Jharkhand and others in at-least one fourth of the districts. While this was intended to be a reminder of the need for prompt action in this regard, it should not be interpreted as a *relaxation* of the earlier order (dated 28 November 2001) directing state governments to introduce mid-day meals in *all* government and government-aided primary schools. Nor should it be interpreted as a licence to *confine* mid-day meals to the said number of districts. However it appears that this is what has happened. Given that this order should have been implemented from the start of the current academic year, we are sorry to report that some state governments have been extremely slow in implementing the direction of the Honourable Court. UP is considering implementing the scheme only in six districts of the State, while Bihar is likely to implement it in only three blocks of each of the ten districts that it was supposed to cover. In most of the other states including Jharkhand, we have received no feedback from letters sent. This pattern is all the more serious, as these are states where hunger is endemic. **We advise the Court to reaffirm the order calling for mid-day meals**

## THE PERILS OF BPL SELECTION: A CASE FROM WEST BENGAL

The process of identifying BPL families is taking place in different parts of the country. This selection process has invited widespread criticism. The complaints we have received from West Bengal illustrate problems that apply across the country.

In West Bengal, the identification process started well before guidelines were issued by the Government of India. The revision process was to start with extensive publicity of the "old" BPL list, but field reports indicate that this did not happen. Starting with this, the whole process of updating the list was done in a remarkably opaque manner. Gram Sansads (as Gram Sabhas are called in W. Bengal) were not involved at all. Little was done to publicise the issue or foster public participation. The new list in the state is based on the latest official poverty estimates, which involve a reduction of almost one-fifth in the number of BPL families. Recognising the questionable nature of this reduction of the BPL quota, the Supreme Court directed the state governments (in May 2003) not to remove any family from the BPL list until further notice. However, this direction had no effect in West Bengal, where the government argues that it had redone its BPL list well before the direction of the court. The process of redoing the list has deprived many poor people of a BPL card. It should be recalled that a BPL card is essential not just for access to the PDS but also for a large number of other poverty alleviation schemes.

To make things worse, the new BPL list has not been publicized as yet. Many people still do not know whether they are on the list or not. This makes it easy for the PDS dealers to cheat people by retaining their cards and drawing their rations. Field reports further indicate that complaints filed by people for being left out of the process have not answered.

The lists are determined by a field-based survey, whereas the number of people eligible for BPL cards is determined by a national survey done by National Sample Survey Organization (NSSO). The methods followed by the two processes are completely different. It would be a curious coincidence if the number of people below the poverty line were the same under both the methods, which are fundamentally different. NGOs in the state claim that many people are cut off the list arbitrarily to match the number of BPL people according to NSSO calculations. The government claims that no names were struck off to match the NSSO estimates, a likely case of curious coincidence. On the whole the selection process is shrouded in secrecy right from the stage of selecting the number of eligible people to 'publishing' the BPL list for dissemination.

**to be introduced in all primary schools, and to clarify that it is only as a matter of good will, and specifically for resource-poor states, that the Court will tolerate partial implementation of mid-day meals in the very short term**.

2.1.7. Before concluding on mid-day meals, we must highlight another important issue, namely caste discrimination. Specifically, **survey reports suggest that in many states, Dalits are prevented from working as cooks in primary schools.** This is a gross violation of the fundamental right to equality and freedom from discrimination as well as the constitutional proscription of untouchability. **Firm guidelines are needed to ensure that Dalits get a fair share of appointments as cooks and helpers in the mid-day meal programmes**, as is already being done in Karnataka. Karnataka's guidelines in this respect have met with some opposition from upper-caste parents, but this is not adequate reason for a loss of nerve. Indeed, there are indications that upper-caste opposition, such as it is, tends to wear out quite rapidly if the guidelines are firmly enforced.

### 2.2. Integrated Child Development Scheme (ICDS)

2.2.1. **There is an alarming lack of attention in most states to the plight of pre-school children** with no satisfactory arrangement of feeding the most needy age group of 6months-2years. **This is an extremely vulnerable age group and also the critical stage when under nutrition can cause serious long-term damage to the children's physical and mental well being**. Such children must be brought to the anganwadi feeding centre and given adequate nutritious meals. In Bihar no feeding of children under this scheme in the first few months of the last financial year took place, as financial sanctions were not issued in time. This year too, financial sanction for the scheme was not issued as on11th August, 2003. Such procedural delays increase malnutrition during the most crucial monsoon months.

2.2.2. **In the order dated 28 November 2001, the Court had directed the state governments to ensure that there is an ICDS centre in "every habitation"**. We are not aware that this order has been taken seriously, or even adequately noticed, in any State. Apart from the much-needed expansion in the number of centres, the functioning of existing ICDS centres is also very poor in large parts of the country. It is only in states such as Kerala and Tamil Nadu that the needs of young children have been taken seriously and that most of the pre-school children have been effectively integrated in ICDS centres. It seems therefore that this crucial aspect of the right to food, has not received the attention it deserves.

### Widows Deprived of Antyodaya Cards in Uttar Pradesh*

A recent survey conducted by the U.P. State Committee of AIDWA shows that many widows and other destitute persons are deprived of any social support. The survey was carried out in July 2003 in 10 villages of Mirzapur District and 11 mohallas each of Kanpur and Lucknow Districts.

The results show that that of 912 persons surveyed, close to one-third had no ration card at all. Among widows, less than one percent were receiving a widow pension. In Mirzapur, the sample villages were amongst the poorest in the district, yet not one of the 164 widows surveyed was receiving a pension. The coverage of widows under other schemes is also very poor. Only 4 out of 165 widows surveyed had BPL cards and only one had an Antyodaya card.

In Lucknow, of the 298 persons surveyed 85 were old, 5 were single women and 27 were disabled. But even among this extremely vulnerable group, most had APL ration cards. For practical purposes, APL cards are of no use in the state. Indeed, APL offtake is a paltry 1% of the total allotted. In Kanpur among 449 widows surveyed, only 11 were covered under pensions and Antyodaya.

| District | Total Surveyed | Widows Surveyed | Coverage of widows under Social Security Schemes | | | |
|---|---|---|---|---|---|---|
| | | | Widow pensions | BPL | AAY | APL |
| **Lucknow** | 298 | 181 | 2 | 0 | 1 | 241 |
| Mirzapur | 165 | 165 | 0 | 4 | 1 | 120 |
| Kanpur | 449 | 449 | 4 | 46 | 3 | 193 |
| Total | 912 | 795 | 6 | 50 | 5 | 554 |

A recent Supreme Court order (8 May 2003) directs the states to provide Antyodaya cards to widows, disabled persons and other priority categories. However as of July 2003, the Government of U.P. had not taken any action to implement this order. The indifference of the state administration is evident from the fact that the local administration is completely unaware of the Courts direction. When the investigators demanded the implementation of the Supreme Court's directions, every District Magistrate they met told them that they had no knowledge of the orders and that no instructions had been received from the Government. The apathy shown by the state administration does not need any further evidence.

* Adapted from a submission received from Subhashini Ali, president of the All India Women's Democratic Association (AIDWA).

## 2.3. Targeted Public Distribution System (TPDS)

2.3.1. **Little progress has been made in expanding the reach and effectiveness of the public distribution system (PDS)**. There is circumstantial evidence that earlier orders of the Hon'ble Court have helped in some cases. For instance, field reports suggest that in some states the opening hours of ration shops have become more regular and predictable, possibly in response to the order requiring ration shops to be open regularly. However, we are still far from full implementation of this direction, and many other directions are yet to be implemented or even acknowledged by the concerned authorities.

2.3.2. **Further evidence has emerged of the dismal state of the public distribution system**. For instance, in 2002-3, offtake as a ratio of allocation under the BPL quota was as low as 12% in Bihar, 9% in Chhattisgarh and 59% for India as a whole[5] . Field reports indicate the system continues to function in a particularly erratic manner in remote and deprived areas. Bihar could lift only 45,112 tonnes of rice in 2002 – 03 out of the total allotment of 8, 87, 712 tonnes of BPL quota, thus depriving lakhs of needy people of their ration entitlements. A study[10] of the PDS system in Bihar and Jharkhand showed that the people hardly benefited from the food distribution system. The quota from the FCI lapses if it is not lifted in time, which often occurs due to procedural and administrative delays. There are several problems with the Bihar State and Food and Civil Supplies Corporation including insufficient infrastructure to ensure proper distribution of grain, lack of working capital and overstaffing. At the micro level beneficiaries are not able to lift grain on time due to lack of timely information and inadequate notice period to arrange funds. It is not surprising therefore that misappropriation of money and illegal sales of commodities occur regularly.
2.3.2. The public distribution system is also plagued with structural problems including endemic corruption, the divisive and unreliable nature of the present "targeting" system, the inadequacy of official "commissions" paid to PDS dealers, and the narrow gap between issue prices and market prices. These issues are discussed in some detail in the report of the High Level Committee on Long Term Grain Policy. The Court has directed the Government of India to communicate its response to this report by 8 August 2003. We hope that this response will provide a useful basis for further discussion of what needs to be done to repair the public distribution system.

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[1] Monthly Foodgrain Bulletin, July 2003 MoFCA, all figures are provisional
[2] 'Food and Power in Bihar and Jharakhand', by Jos Mooij, EPW Special Article, August 25-31 2001

## 2.4. Antyodaya Anna Yojana

2.4.1. **On a more positive note, further evidence has emerged of the relatively effective functioning of Antyodaya Anna Yojana (AAY)**, at least in comparison with other food schemes. According to official data, the offtake under AAY close to 90% in majority of the states.

2.4.2. In a recent interim order, dated 8 May 2003, **the Hon'ble Court directed the Government of India to "place on AAY category" six priority groups of vulnerable persons, including widows, old persons and disabled adults with no regular support or assured means of subsistence**. In response to this, the Government of India has issued guidelines calling for priority to be given to these groups in the course of expanding the coverage of the programme from 100 lakh to 150 lakh households, as announced in the last Budget. However, we note with concern that these guidelines do not fully reflect the order of the Court. **In particular, the guidelines suggest that AAY cardholders should be selected from the BPL list, in spite of conclusive evidence that the BPL list is unreliable**. This eligibility condition should be removed.

2.4.3. Another flaw in the AAY guidelines is that **instead of making the priority groups eligible for AAY cards as a matter of right, as recommended by the petitioner and directed by the Court (in its order of 8 May, 2003), the Government of India has fixed top-down "quotas" on the number of additional cards to be issued in each state**. Further, the quotas involve an expansion of only 50% in the coverage of the programme – from 1 crore households to 1.5 crore households. This is inadequate, especially because the quotas tend to be distributed mechanically between different areas by the state governments (e.g. *pro rata* the BPL list), in the absence of detailed information on the incidence of destitution. The result is that in pockets of concentrated destitution, where many AAY cards are needed, only a small proportion of the vulnerable households are covered. To illustrate, in a recent surveys of 165 widows in 7 poor villages of Mirzapur district, undertaken by the All India Democratic Women's Association (AIDWA), it was found that only one of these widows had an Antyodaya card, and many had no ration card at all. To address this problem, there is a need to clarify and reassert the principle that destitute households are entitled to AAY cards as a matter of right. One possible formulation is as follows: "Anyone who is deemed vulnerable to hunger, as determined by the gram sabha, is entitled to an Antyodaya card as a matter of right."

2.4.4. We are aware of the fact that gram sabhas are not very active in many parts of the country, but the proposed direction would at least provide a mechanism whereby anyone vulnerable to hunger can be protected from it through *local* initiative, without waiting for the good will of the state. A different objection is that, if this direction is passed, the government may be flooded with "frivolous" applications. However, there is no great difficulty in putting in place a verification system to scrutinise cases where an unusually large number of applications for AAY cards is submitted by the gram sabha.

2.4.5. The government of India should be directed to accommodate a further expansion of the coverage of the AAY programme (beyond the present 1.5 crore cardholders) in the event where further applications are submitted on the basis of the proposed direction. Since the programme is working relatively well, and is doing a great deal to protect the recipients from hunger, there should be no hesitation in expanding it.

2.4.6. The order of 8 May 2003 calls for the inclusion of *all* "primitive tribes" in the Antyodaya programme. We understand that this order is being implemented in many states. However, we are concerned about the speed of this operation. As mentioned earlier, **the next few months are likely to be a time of extreme hardship for poor communities across India**, especially in areas that have experience a long period of drought until this monsoon. One month is a short time in the life of a busy government officer, but it is an interminable ordeal for women, men and children who have run out of food. In Sheopur district of Madhya Pradesh, where Sahariya families live in extreme hunger at the best of times, we received repeated assurances from the District Collector and others that Antyodaya cards would be distributed by the end of June. Yet, in early August, the hungry Sahariyas are still waiting for their cards. **We urge the Court to issue strict orders for the accelerated distribution of Antyodaya cards, not only to primitive tribes but also to other priority groups covered by the order of 8 May 2003**.

## 2.5. Other Social Security Schemes

2.5.1. *Annapurna*: On 28 November, 2001, the court directed the governments to implement Annapurna Yojana, which provides 10 KG of grain free of cost for the aged destitute, who are not receiving pensions. We wish to bring to your notice that the scheme has been undermined. Government of India, has since transferred the scheme to the states giving them the option to implement the scheme as they feel like. 'Additional Central Assistance' has been given this year and it is not clear if

this will be extended each year. **In the meanwhile, many states are considering dropping the scheme, and Madhya Pradesh has terminated it already**. In district Sheopur of Madhya Pradesh, our investigators met many elderly persons who were very dependent on the Annapurna card for their survival, and had been abruptly deprived of it in March 2003 without any alternative arrangement. This is a clear violation of the Court's order of 28 November 2001.

2.5.2. *National Social Assistance Programme (NSAP):* Government of India had estimated in 1996 that the three social security schemes under NSAP will require an annual allocation of Rs. 1482 crores if the needs of all eligible beneficiaries were to be met. However, funds for these schemes are declining every year[7], and in the current budget the provision is only 676 crores, which is not even enough for half the people. Underfunding leads to poor identification, which leads to further reduction in allocation, and thus a vicious cycle is established. Therefore the GoI must be directed to fully fund the scheme as per the estimation of the Ministry of Rural Development in 1996.

2.5.3. Moreover, GoI has changed the character of the scheme from a centrally sponsored one to a state plan scheme. There are several implications of this change: (1) Earlier the MoRD used to transfer the amount straight to the bank account of the DRDA in the districts, which ensured quick availability of funds at the district level. Now, the districts will get the same amount from the State Finance Departments, and fiscally weak states may often not be able to release the amount in time. (2) Earmarking by the Planning Commission is not a foolproof method of protecting the outlay for a particular scheme, and there have been cases when the states divert the earmarked fund to other pressing needs, and then try to get the approval of the Planning Commission expost. (3) The GoI used to give extra allocation of 4% of the pension amount to cover administrative costs that was used in the districts for supervision, hiring vehicles, etc. Many states have stopped doing that with the result that there is not even enough money in the districts for trivial items such as buying stationery, maintaining accounts, etc.

2.5.4. *Pension schemes*: Social security pensions are quite effective, cost very little and tend to reach the poorest. However, **there are strict ceilings on the number of people who can get pensions. This means many deserving widows and elderly have not been able to avail the benefit of such schemes despite utter penury and destitution**. Over

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[7] For details of decline in allocations made under NMBS see Table 3

time it is essential to move to a social security system that is demand based, and not based on administrative convenience. While the move to a demand based system should be made expediently, in the near term we reiterate our earlier suggestion (in the third report of the commissioner) for doubling the coverage of social security pensions.

2.5.5. *National Maternity Benefit Scheme*: In the Budget of 1995-96, at the time this scheme was introduced, numerical ceilings based on census and poverty estimates had estimated the physical long run target to be close to 58,22,200 pregnant women. However provisional figures for the year 2002-03 reveal that the number of beneficiaries receiving benefits under NMBS is nowhere close to this figure, and is as low as 10 to 11 lakhs. Only Rs. 52 crores was released last year for this Scheme,

**MAKING A CASE FOR COMPENSATIONS – AN EXPERIENCE FROM SHADOL, MADHYA PRADESH**

A public hearing in Shadol, Kotma District held in early June this year, brought to light complaints regarding irregularities in the implementation of food and employment related schemes. A letter along with a detailed description of the individual cases and the redressal measures sought was sent to the Chief Secretary. In cases where the delay/non-payment of entitlement was overdue, it was suggested that compensation be given.

@ 10% of the amount in arrear, for a period greater than a month
@ 25% of the amount in arrear, for a period greater than a year

Rs. 50 for every month the beneficiary did not receive grain under Annapurna Yojana

Subsequently an action taken report, giving feedback on the relief administered in all the cases raised was sent to the Commissioners. The report indicated that all the issues had been resolved. In addition in most of the cases where compensation was asked for, the request was acted upon and delivered. In order to confirm this, a local NGO was asked to verify the report sent to the Commissioners. In the 39 cases in which compensation was asked for, 20 of the individuals confirmed that compensation had been given to them at the rates mentioned above.

An institutionalised system of compensation as a measure of redressal in cases where entitlements have not been received has important implications. In a system where a state that errs goes scot-free, a system of compensations has the potential to protect the 'victims of administrative inefficiency' and also provides them with leverage for redressal. The state administration must be appreciated for its swift action, and for providing compensations where many states have refused to do so.

whereas the requirement was for Rs. 290 crores. **Field enquiries also reveal that money hardly reaches the woman during the last months of her pregnancy as was envisaged under the scheme**. Inadequate publicity and lack of familiarity has eroded the potential of this scheme to benefit women when they require it most. In its current form, allocations are made based on the extent to which funds are used in the previous year, since releases from the center are typically demand driven.

## 2.6. Employment Programmes

2.6.1. In its order of 8 May 2003, the Hon'ble Court directed that "the recommendation that present SGRY scheme should be at least doubled be implemented, both in regard to allocation of food-grain as also cash, for the months of May, June and July". It is, unfortunately, too early to assess whether and to what extent this direction has been implemented, as the relevant information is yet to be released. Meanwhile, we recommend that the direction should be extended until the end of the financial year for those districts that have utilised more than ninety percent of the funds allotted to them. Indeed, at a time when the country is exporting grain to the tune of 10 million tonnes per year, in the shadow of large foreign exchange reserves, it is not unreasonable to ask that some of it be used to expand employment programmes for the poor.

2.6.2. During the summer months, large amounts of relief employment were generated in several drought-affected states. In Rajasthan for instance, as many as 7 million labourers received 15 days of employment during the month of June, according to official figures. As a ratio of the total population (56 million in this case), **this is probably the largest public-employment programme *ever*. This experience confirms that the state governments have the capacity to organise large-scale rural employment programmes**. It is useful to bear this in mind in the context of the petitioner's plea for an employment guarantee programme.

2.6.3. *Non-implementation of Jaya Prakash Narayan Employment Guarantee Yojana:* The Government of India announced the creation of Jaya Prakash Narayan Employment Guarantee Yojana (JPEGY) during the budget of 2002 – 03, almost 18 months ago in February 2002. This is a scheme with a relatively modest budget of Rs. 3000 crores that seeks to cover about 10% of the poor population. While a national employment guarantee should be the final aim, an immediate beginning could be made with this scheme that has been announced by the Government of India itself. We advise the Court to direct the Government of India to implement the scheme with immediate effect in at least 100 backward

districts. Subsequently, the scheme could be expanded to the rest of the country in a time bound manner.

2.6.4. *Mechanisation in employment programmes:* Recent reports submitted to us point to an **alarming trend of "mechanisation" of public projects and even relief works**. The use of labour-displacing machines (e.g. tractors and excavators) on public projects is increasingly common, even in cases where these machines do not serve any clear purpose other than lining the pockets of enterprising contractors and intermediaries. This is when the work done by such machines like digging and carrying to sites can be done by human labour. The use of tractors also leads to fudging of accounts since payments for these are illegal. In Sendhwa (Madhya Pradesh), a public hearing held on 29 May 2003 exposed the widespread use of tractors on relief works in the area, and this practice appears to be common elsewhere as well. Clearly, the use of labour-displacing machines defeats the purpose of relief works and other "labour-intensive" employment programmes. It can be seen as a violation of the right to work, and this practice should be nipped in the bud. Evidently state governments and central government need to be reminded of the need for vigilance on this score.

2.6.5. *Non-Payment of minimum wages*: Minimum wages are not being paid in wage employment programmes in some states. Madhya Pradesh clarified to the commissioners that they are paying less than the minimum wages and that the Relief Code permits such payments. In Gujarat, while the minimum wage is Rs 60, the wage for SGRY has been fixed at Rs 50 and that for scarcity relief works at a much lower level of Rs. 42.50. (Also see Table 1). The issue has earlier been challenged in the High Court of Rajasthan where court ruled that wages less than the minimum should not be paid in relief works. **We urge the court to clarify that wages less than the minimum wages should not be paid even under conditions of scarcity.**

## 2.7: Urban Destitution

2.7.1. *Urban destitution*: The issue of urban destitution and hunger has remained out of focus in most of the earlier hearings. Correspondingly, the interim orders passed so far have little bearing on the problem. Yet, the urban destitute (pavement dwellers, leprosy patients, street children, the homeless, abandoned persons suffering from mental illnesses, and so on) are among the most vulnerable members of society. Even in Delhi, about 3,000 unclaimed bodies are found on the street every year according to Police records, and most of these deaths are likely to reflect a state

of extreme deprivation in which hunger plays an important part. In its order of 8 May 2003, the Hon'ble Court reiterated that "the anxiety of the Court is to see that the poor, the destitute and the weaker sections of the society do not suffer from hunger and starvation." From this point of view, it is of utmost importance that the issue of urban destitution should be brought within the purview of these hearings and orders.

2.7.2. We urge the court to consider making a small beginning in tackling the problem of urban destitution by three simple steps suggested below.

2.7.3. *Ration cards for migrant labourers*: Migrant labourers come from the poorest sections of the society. Their temporary residence cuts them off from the reach of most welfare schemes. In particular, they are cut off from the public distribution system as their ration cards are attached to the place of residence. Ideally, migrant labourers should have 'mobile ration cards' that can be used in the destination area. The court could consider directing the Government of India to formulate a viable scheme to provide such ration cards to migrant labourers within a short period of time.

2.7.4. *Ration cards for the Homeless*: It is unfortunate that most states deny ration cards to homeless persons as a matter of policy. It is often argued that ration cards are used as a proof of address and that illegal immigrants may use it. It is easy to get over this problem by giving special ration cards to such groups, which cannot be treated as a proof of address. In any case it is necessary to reaffirm the principle that homeless persons are entitled to the support of the state. We advise the Court to direct the states to identify the homeless and take measures to provide them with special ration cards.

2.7.5. *Homeless destitute children*: Among homeless persons, we wish to single out homeless destitute children for special attention. The so-called 'street children' are exposed to unacceptable levels of hunger, which the state must address. We request the court to direct the Government of India to provide grain free of cost to NGOs that are willing to provide one nutritious meal to these children every day. The amount of grain required for this purpose is not large and could be drawn from the unutilised part of the existing BPL quota. The states must also be directed to take active measures to involve NGOs to help such children, however with it being clear that such efforts will only be supplementary to the primary role which is that of the states. The experience of Karnataka and Delhi in involving NGOs in the mid-day meal scheme illustrates the

## Export Drive Diverts Food from Welfare Schemes

The export drive has been intensified even as millions of people are going hungry at home. In November 2000, the government decided to sell wheat to private exporters at a price "equal to the economic cost minus two years carrying cost but not lower than the central issue price for BPL."* In the following year the scheme was expanded to cover rice as well. This decision has led to an unprecedented surge growth of food grain exports. **Between April 2002 and June 2003, more than 15 million tonnes of grain were exported from India, at almost BPL prices.** In effect, the Government of India is subsidising food consumption in other countries instead of dealing with hunger at home.

Indeed, the export boom has been fuelled by large export subsidies. The Annual Report of the Department of Food for 2000-01 mentions that "the export price of wheat has been fixed at Rs. 4150/- per MT, which is the PDS issue price of wheat for BPL families." Subsequently wheat and rice were made available for export at the same price as for domestic consumption under the Open Market Sales Scheme (O.M.S.S.). However, the exporters were to be reimbursed "post-delivery expenses" in addition to the cash subsidy on account of inland transport. Export subsidies have become a huge burden on the public exchequer.

The common argument that resources are lacking for an expansion of welfare schemes is clearly misleading. Had the amount of grain exported in 2002-3 (more than 12 million tonnes) been used for welfare schemes like mid-day meals and employment programmes, these programmes could have been **doubled.**

** Annual Report: Department of Food and Public Distribution, 2000-01, page no. 25.*

| Year | TPDS | *Welfare Schemes | Exports |
|---|---|---|---|
| **2001-02** | 138 | **72** | **47** |
| **2002-03** | 201 | **114** | **125** |

*Note: *Mid-day meals, SGRY and other employment programmes, nutrition programmes, anganwadis, grain banks, etc.*

*Source: Monthly Foodgrain Bulletin, July 2003, Department of Food and Public Distribution.*

potential for such as arrangement in urban India. We recognise that the problem is complex and requires a much stronger treatment. While the measure we are suggesting will not solve the problem of homeless destitute children, it is a tangible step in that direction.

## 2.8. Corruption and Transparency

2.8.1. *Corruption*: The debilitating effects of corruption on food-related schemes emerge again and again in the field reports submitted to us. For instance, a pilot investigation of relief programmes in Sheopur district of Madhya Pradesh (initiated under our guidance) uncovered systematic embezzling of grain intended for drought-affected people[1] . Extreme starvation was common within a few kilometres of the district headquarters, where truck-full of relief grain were being sold in the black market. In spite of persistent requests from us to the highest authorities in the district (including the District Collector and CEO), our envoys were denied access to the "muster rolls" used on relief works. When the researchers finally succeeded in obtaining three muster rolls for village Hirapur, all three turned out to be fudged. This and related experiences point to the need to link the right to food with the right to information. Indeed, in Rajasthan, where a right to information law is in place and the right to information movement has fostered a culture of public vigilance, the practice of fudging muster rolls on relief works has largely disappeared. There is a need to learn from this experience and to put in place accountability mechanisms that will help to eradicate corruption elsewhere. Given that the right to food cannot be realised without the right to information, it may be appropriate for the Court to call for timely introduction of right to information laws by the state governments.

2.8.2. *Open access to records of food and employment schemes*: Documents pertaining to development schemes are routinely denied to people on one pretext or the other. This violates the right to information and creates an atmosphere conducive to corruption. Even the representatives of the commissioners have been denied access to muster rolls and other documents.

2.8.3. There is no valid argument for secrecy in food and employment schemes. We advise the court to direct that (i) all records pertaining to all food and employment schemes are public records (ii) certified photocopies of any record should be given within one week of application.

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[1] See Sheopur Report

2.8.4. *Prohibitive pricing of information*: In many cases there is a prohibitive pricing for providing photocopies of documents. Muster roll is the key document to establish corruption in wage employment programmes. In Madhya Pradesh, while two rupees per page is charged for photocopying one page of most documents, ten times more is charged for photocopying muster rolls. One set of muster roll often runs into a few hundred paged and this price makes it impossible for most individuals and citizens' organisations to access this information. For example, an organization has been recently asked to pay over twenty-two thousand rupees for documents of three projects. Prohibitive pricing effectively curtails the right to information, and measures must be taken to

## CORRUPTION AND TRANSPARENCY IN BARWANI

Badwani District of Madhya Pradesh clearly illustrates the case of suppressing the right to information and creating an environment conducive to corruption. The commissioners received complaints of use of machines and other irregularities in the district. A representative of the commissioner visited the district and the following issues came up during the visit.

- Non-payment of wages on time.
- Corruption in payment of wages, including diverting grains and unofficial payment of cash wages of lower value.
- Large-scale use of labour displacing machines, including tractors and excavators (JCVs).
- Poor quality of works undertaken.

While corruption and other irregularities are an issue, what was striking was the total absence of transparency and an atmosphere conducive to corruption. Some civil society organisations in the region have been trying to obtain muster rolls and other documents pertaining to these works for over a year, and have not received a single muster roll as of date. Even the intervention of the commissioners has not helped. The administration tried various measures including not accepting complaints, delay-tactics, and a host of other measures. The collector, for example, informed the representative of the commissioner that **the administration is not obliged to provide access to the records.** After the intervention by the commissioner, the organisation has been asked to pay over 22, 000 rupees to access the records of three project, something that few organisations can afford to pay. Even if one can afford, none will find it worth the cost.

In a detailed letter, the commissioners demanded an enquiry team having some non-administrative members. The administration chose to ignore this and has done "an enquiry" by itself. Needless to say that the issues raised by the commissioners have been summarily dismissed.

make information affordable. We advise the court to direct that no more than cost price is charged for photocopies, and we recommend at most one rupee per page as a reasonable charge.

2.8.5. *Dissemination of SC order*: We are concerned to hear that the Court's orders often fail to reach the concerned authorities. For instance, during the last three months we have received persistent complaints that the local District Collector was not aware of the order of 8 May 2003. This is a serious matter, since the District Collectors are centrally involved in the implementation of this and other orders. We advise the Court to direct the state governments to ensure that future orders are communicated without delay to District Collectors and other concerned authorities.

## 3. SUMMARY OF DIRECTIONS SOUGHT

In the light of the preceding report, we advise the Honourable Court to:

**Mid-day meals**

1. Ensure that states that have not yet initiated mid-day meals in primary schools comply with the order of November 28, 2001 in this regard. Particular attention needs to be given to Bihar, Jharkhand, Orissa, Uttar Pradesh and West Bengal. **(2.1. Pg. 5 and map Pg. 1A)**

2. Clarify that the earlier direction permitting resource-poor states to introduce mid-day meals initially in just one-fourth of the districts is only a temporary measure, which does not override the order of 28 November 2001, and categorically direct these states to implement mid-day meals in the entire state within six months. **(2.1.6, Pg. 7)**

3. Direct the States to ensure that a fair proportion of Scheduled Caste persons are appointed as cooks and helpers in the mid-day meal programme. The relevant measures should include, at least: (a) reservation of at least 50 per cent for Scheduled Castes in future appointments; (b) reinstatement of cooks and helpers who have been dismissed because of their caste; (c) ensuring that at least one third of all cooks and helpers belong to the Scheduled Castes. **(2.1.7. Pg. 8)**

**Integrated Child Development Scheme**

4. Direct the states to comply with the order dated 28 November 2001, including the directions calling for an anganwadi to be available in each habitation, and for coverage of adolescent girls, pregnant and lactating women under the ICDS programme. **(2.2. Pg. 10)**

5. Also in compliance with the same direction, direct states to ensure that all slums are within convenient reach of an anganwadi and urban homeless children are covered in Anganwadis.

**Antyodaya**

6. Determine that possession of a BPL card should not be used as an eligibility criterion for inclusion in the Antyodaya programme. **(2.4.2. Pg. 13)**

7. Direct the states to accelerate the issue of Antyodaya cards, especially to primitive tribes, in compliance of the 8 May 2003 order. Cards must be issued within four weeks to all primitive tribes and within eight week for other priority groups **(2.4.6. Pg. 15)**

8. Direct the Government of India to provide additional Antyodaya cards if the existing cards are inadequate to cover all single women, primitive tribes and other priority groups listed in the order of 8 May 2003. **(2.4.3. Pg. 13)**

**Social security pensions**

9. Direct the Government of India and the State Governments to double the coverage of social security pensions, as recommended in our third report

**Public distribution system**

10. Seek the response of the Government of India to the recommendations of the High Level Committee on Long Term Grain Policy, as per the order of 8 May 2003.

11. Appoint a task force to review the process of BPL identification, as advised in our third report.

12. Direct Govt. of West Bengal to present BPL Lists in each gram sabha for scrutiny and revision, as provided for in GoI guidelines that applies to all states **(Box on Pg. 9)**

**Annapurna**

13. Direct the states that have discontinued Annapurna to reintroduce and continue the scheme forthwith with retrospective effect. **(2.5.1. Pg. 15)**

14. Direct that no scheme covered by the orders of the court should be discontinued or diluted without the approval of the court.

**National social assistance programme**

15. Direct that no state should discontinue National Social Assistance Programme (consisting of National Old Age Pension Scheme, National Maternity Benefit Scheme and National Family Benefit Scheme). If already discontinued, the state should reintroduce it forthwith with retrospective effect. **(2.5.2. Pg. 15)**

**Urban destitution**

16. Direct state governments and union territories to carry out annual surveys of urban destitute persons and make arrangements to protect them from hunger.

17. Direct states and union territories to ensure that relief kitchens are available within walking distance in all urban areas and accessible to the urban destitute including the homeless, destitute children, single women, people with stigmatised ailments and disabled persons without care. Direct the Government of India to supply free grain for this purpose to state governments, and also to NGOs that are willing to provide cooked meals to the urban destitute.

18. Direct the states to ensure that all Indian citizens are eligible for a ration card, including the homeless. All state governments should initiate measures to provide ration cards to the homeless, if necessary by providing ration cards that cannot be used as a proof of address. **(2.7.3. – 2.7.4. Pg. 21,22)**

**Employment**

19. Direct GoI and the States to submit an affidavit outlining the steps they have taken to comply with the direction to double SGRY in May – July 2003. **(2.6.1. Pg. 18)**

20. Direct the states that have not doubled employment creation under SGRY in May–July 2003, as per the order of 8 May 2003, to implement the direction by December 2003 at the latest. Government of India should release the relevant resources (grain and cash) no later than four weeks from the order, to enable the states to plan and generate employment. **(2.6.1. Pg. 18)**

21. Direct that ordinary legal minimum wages be paid in all circumstances, including conditions of scarcity or relief works **(2.6.5. Pg. 20)**

22. Direct the Government of India to implement the Jaya Prakash Narayan Employment Guarantee Yojana in at least 100 backward dis-

tricts. The entitlements in this scheme should be no less than those guaranteed by the Maharashtra Employment Guarantee Programme. In particular, any individual in the selected districts should be able to get employment at the legal minimum wage within one fortnight of registration, and should be eligible for compensation if employment is not provided in time. GoI should frame the scheme and implement it in identified 131 backward districts not later than one month from the date of the order. **(2.6.3. Pg. 19)**

23. Ban the use of labour-displacing machines in all wage employment programmes including relief works, SGRY, food-for-work, and other such programmes aimed at creating employment. **(2.6.4. Pg. 20)**

**Restraint on exports**

24. Direct the Government of India to reconsider the policy of export of foodgrains and resort to exports only after fully and adequately meeting the food requirements of the people in the country, particularly the poor and vulnerable.

**Transparency and Monitoring**

25. Assert that all documents pertaining to food and employment schemes, including those mentioned in the interim order of 28 November 2001, should be treated as public documents, open to public scrutiny and accessible for consultation by any individual at any time. In cases where an application is made for a copy of these documents, certified photocopies should be provided within one week of the application. The charge for the photocopies should be no greater than the cost of photocopying and in any case no higher than Rs. 2 per page **(2.8.2. - 2.8.3. Pg. 25, 26)**

26. Direct the States and the Government of India to submit an affidavit clarifying the procedure required to apply for these documents, and the available redressal mechanisms when records are not provided on time. **(2.8.2. Pg. 25)**

27. Direct the states and the Government of India to conduct periodic reviews of schemes using competent organizations, and to involve the same in monitoring the schemes.

28. Direct the states to ensure prompt and wide dissemination of the directions of the court, including distribution within two weeks to the district collectors and other officers responsible for implementing the directions of the court. **(2.8.5. Pg. 26)**

# REPORTS FROM THE FIELD

## MADHYA PRADESH

• Cooked mid day meals are not being provided in all schools of the state. According to reports sent by the Center, all but 23 Blocks remain to be covered. But implementation within non-tribal blocks is likely to be patchy since the state has passed the buck to the Panchayats to implement the scheme with no financial support. The state should be asked to furnish an affidavit stating the extent of coverage of schools in non-tribal blocks.

• The Annapurna scheme for the aged destitute has been discontinued, despite Supreme Court Orders that all states are to implement this scheme fully. Since the scheme targets the destitute people, scrapping the programme is likely to lead to much misery among the beneficiaries, for whom it was the only source of food. It is not clear if there is a policy to make an alternate arrangement for Annapurna beneficiaries. On the ground, we did not find any evidence of alternate measures.

• In Sheopur we noticed that pensions are not being paid each month in contravention of Supreme Court Orders. Pensions are hardly paid more than once every three months. Such delays were also noticed in Badwani District. Since these delays are typically due to late releases by the state, it is quite likely that this is a statewide phenomenon.

• Several complaints regarding the use of tractors, excavators and other labour displacing machines in wage employment programmes, were received. The representative of the Commissioners had an opportunity to confirm the use of such machines in SGRY and other relief works in the district of Badwani.

• The wage rate for relief employment is Rs. 50.50 per day, which is set lower than the minimum wage level set by the state. In response to a query by the commissioner, the state claimed that this is permissible under the relief code.

• In relief works wages are typically paid under "task rates" i.e. payment per unit of work rather than daily wage. Many people end up receiving as little as twenty rupees a day, which is much less than the minimum wage rate. Since wage is not defined as 'daily wage', this

does not violate the minimum wage norm. But with the low wage a day of work often does not even yield food for a day for the family.

- Wages are not being paid within one week of work done in many parts of the state. The commissioners have received complaints from Shadol, Shivpuri, Sheopur, Badwani, and a host of other districts.

- There is a glaring lack of transparency in development related works in the state. It is virtually impossible to access any relevant document. Even the commissioners' representatives have found it difficult to access documents.

- On a positive note, the commissioners recommended the payment of compensation for labourers who had not received their wages for well over a month. The matter was taken up in the district of Shadol from where the commissioners received the information. The district promptly addressed each case and also paid the compensation prescribed.

**Financial performance**

- Funds under NMBS remain unutilised resulting in lower releases in subsequent years, since releases by the center are demand driven. A decline in funds released by the center from Rs. 543.84 lakhs in 2001-2002 to Rs. 363.09 lakhs in 2002-2003, does not speak well for the ability of the state administration to utilize its funds adequately.

- The funds utilized as a proportion of that allotted under SGRY could do with significant improvement. For the year 2002-2003, 87% and 51% of the total funds available under SGRY I and II respectively were utilized.

- The figures for utilization of foodgrains under SGRY present a dismal picture. Of the total available stock in the year 2002-2003, only 39% under SGRY I and 49% under SGRY II was utilized by the state government at work sites.

- State government's share of funds was Rs. 8957.34 lakhs under both streams of SGRY. Out of this the GoMP has released Rs. 7848.75 lakhs, a shortfall of more than Rs. 1108 lakhs.

## UTTAR PRADESH

- **Mid-day meal scheme has not been initiated at all**. The government had notified six districts after the Supreme Court hearing for initiating the scheme. A team representing the Commissioners visited Barabanki, which is one of the notified districts. Not only were there no signs of cooked meals being provided but also there were no signs of preparation for any future provision of cooked meals.

- The funds utilized as a proportion of that allotted under SGRY presents a dismal picture. For the year 2002-2003, only 68% and 39% of the total funds allotted for SGRY stream I and II respectively, has been utilized.

- The state government has not lifted its entire quota of allotted grains under SGRY II, available for free from the center. Only 70% of that allocated has been lifted. The Government of Uttar Pradesh received an allocation of 2 lakh tonnes during 2002-03 under SGRY Special Component, against which it utilized only 0.78 lakh tonnes, i.e. 39% of the funds available.

- The funds released by the Center for NMBS between the year 2001-2002 and 2002-2003 has shown a sharp decline of about 50%. This is mainly on account of non-utilization of funds since releases are demand driven. The amount released decreased from Rs. 1075.35 lakhs to Rs. 592.82 lakhs between the two years. This is despite several demands for greater disbursal of funds under this scheme.

- The food component had not been paid to the workers in the villages of Badela Narayanpur in Block Banikoder. The DM Lucknow informed Dr. N. C. Saxena that wheat has not been supplied to the district for three months by the FCI.

- In Pindsawa village of Barabanki District, many works conducted under SGRY II by the Panchayats were capital-intensive in nature. This is in clear violation of SGRY guidelines and reduces the employment potential of wage employment programmes undertaken.

- In Pindsawa village of Barabanki District, the Commissioners team inspected one SGRY I work undertaken in the year 2002-2003. While the official wage rate is Rs. 15. 50 in cash along with 8.5 KG of grain, no grain at all was given and a cash payment of Rs. 40 was paid to the

workers. This is less than the minimum wage of Rs. 58 (cash and grain) that is supposed to be paid at public works.

- In Pindsawa village of Barabanki District all the 'null' projects undertaken were done using 'voluntary labour'. However. the muster rolls have been filled and it has been mentioned that payment was made both in cash and kind to the 'labourers' employed on the works. Further there were many works that existed on paper, but not on the ground.

- It seems that ration shops do not open regularly in most villages of Barabanki district that the Commissioner and his team visited. The same was reported in other places too. The beneficiaries typically cannot buy in instalments or carry over benefits when cash for some months is not available.

- In the field it appears that many poor people holding BPL cards are not given rations. For the year 2002-2003 the off take of rice and wheat under BPL as a proportion of the amount allotted was 40% and 76% respectively.

- **In clear violation of Supreme Court Orders,** BPL and Antyodaya Ann Yojana beneficiaries are not receiving their full entitlements. In almost all the cases checked, Antyodaya beneficiaries are being overcharged and grain is typically distributed once in two or three months.

- It was brought to our attention that some banks refuse to open accounts for individuals who cannot give the minimum balance (sometimes as high as Rs. 300) required in cash. For cases where pensions and other benefits are being made by cheque, this often leads to non-encashment of cheques. Instructions should be issued to banks to open accounts and further to not deduct bank charges on account of such transactions.

- Brick kilns in UP employ a large number of migrant labourers. The pay and the conditions of work are appalling. Unfortunately, by virtue of being migrants the state does not provide them with ration cards or with other benefits from welfare schemes, typically provided by the state. It is therefore important to consider providing them with Mobile Ration Cards so that such poor families can have access to the government welfare schemes.

• In Bahraich District, close to 1000 families were displaced when the Ghaghra River changed its course. A survey organized by Ghaghra Visthapit Morcha and FIAN-U.P. to identify displaced families needing BPL cards identified 456 such families in need of urgent support. The office of the DSO office had further requested that 50% of these should be changed to Antyodaya cards, due to the economic situation of these families. However currently they have no access to *any* government scheme.

• A study conducted in the 35 forest villages of the districts of Bahraich, Maharajganj, Gorakhpur, Pilibheet indicates that in spite of the historical background of these groups they are often not considered citizens of the village Panchayat, because of which ration cards are not provided to them. This limits greatly their access to many of the Government welfare schemes. More specifically they identified 6752 families who had no ration card of any kind.

• In Naibasti hamlet of Panchayat Devghat in the district of Allahabad, inhabited predominantly by tribals, there appears to be little implementation of government social security schemes. In spite of the extreme poverty no one from around 50 households in the village is benefiting from mid-day meals, widow pensions, AAY, Annapurna, SGRY and NMBS.

• A survey covering villages in the three blocks of Badagaon, Haruaan, NagarNigam, Pindra and ChiraiGaon, which are largely SC/ST settlements showed that 2032 had no ration card of any kind. This meant that no assistance could be given to the 346 pregnant women under NMBS since BPL status is required for eligibility. However even the assistance provided under ICDS was not available. Of the 345 births that took place only 27 were delivered at the Primary Health Center since the rest could not afford to pay the bribe demanded at the government center.

• Reports of corruption have been received from the Fathepur Mandav block of Mau District where rain received for food for work programmes have been siphoned off to the black market. People working under the scheme are entitled to Rs. 23 in cash and 5 kg of rice daily. For the period between April 2002 and March 2003 however, the workers in the district have only received the money. On an average, about 100 kg of rice is due to every worker under the scheme. From the 584,5 quintals of rice that had been issued to the Senior Marketing Inspector Madhuban, only 2470 quintals has been allocated to the Gram Panchayats for distribution among workers.

**CORRUPTION IN RELIEF WORKS:**
**RESULTS OF A JOINT ENQUIRY BY THE STATE OF ORISSA AND THE COMMISSIONERS' REPRESENATIVE**

The commissioners received a complaint of irregularities in SGRY in Sundargarh District of Orissa. The complainant was able to access the muster rolls, when they found various fake entries in them. The commissioners' intervention was sought based on the fake musters, and a request was made to ensure that people who have not yet received the wages should be paid immediately. The commissioners took up the issue with the Government of Orissa and demanded a joint enquiry. Acting upon it immediately, the state set up a committee along with a representative of the commissioner.

The report of the independent member of the committee brings out various irregularities in the implementation of SGRY, including:

- Fudging of muster rolls, and embezzlement of funds
- People had to travel fifteen kilometres to collect the grain component of their wages.
- Many projects were started without formal sanctions
- Wages are not paid within one week of work done, and the payment is highly irregular.
- A contractor Mr. D. D. Banarjee was used for the projects in contravention of the rules.
- Lack of basic amenities including drinking water, crèche and basic medical facilities.
- Poor monitoring and irresponsive administration that chose to ignore repeated complaints by villagers.
- Payment of different wages for men and women by the contractor.

The good news is that the GoO was responsive to the commissioner and an enquiry was promptly set up. It remains to be seen as to what measures the government will take based on the findings of the enquiry.

## WEST BENGAL

- **Close to one-fifth of names removed from BPL list even before court's directive:** The court directed in May that no name should be stuck off the BPL-list till further orders. West Bengal completed this exercise well before May 2003, and a large number of families have been removed from the BPL list. New cards have also been issued to people already.

- **Persistent non-display of list of beneficiaries:** Field reports indicate that list of beneficiaries of various schemes have not been publicised in each village as directed by the court on November 28, 2001. Many reminders have been sent to the state on this issue. The state government took action by sending letters to the district collectors to take further action, but not much impact was seen on the ground.

- **Cooked Mid-day meal scheme is being "implemented" only in a token sense in the state.** In our previous report we had better words for the state since mid-day meal was initiated in four districts. Unfortunately, we did not pay attention to the fact that it only 1250 schools were covered in all! Currently nine districts are being 'covered' but cooked meal reaches a mere 2% of the intended beneficiaries. The state has not provided a time frame by which the government plans to fully implement the direction of the court.

- **ICDS is seriously hampered in West Bengal** due to a host of problems including poor coverage. The court directed on November 28, 2001 that all habitations should be provided with an anganwadi, which has not happened. **Further,** adolescent girls receiving benefits under the scheme as directed by the Supreme Court. The government admitted this in a recent communication with the commissioners and mentioned shortage of funds as the reason for non-implementation of the Order.

- **Off take under BPL and AAY continues to be very low** and much below the national average. Provisional figures released for the year 2002-2003 indicate that the off take of BPL grain as a percentage of that allotted was 23% for rice and 72% for wheat. Off take under AAY at 62% for rice and 69% for wheat is much lower than the national average of 83% and 88% respectively.

- **Funds utilized as a proportion of that allotted under SGRY presents a dismal picture**. For the year 2002-2003, only 57% and 69% of the total funds allocated under stream I and II respectively were utilized.

- The state government has not even lifted its entire quota of allotted grains, available for free from the center. The GoWB lifted just 63% and 64% percent of that allotted under SGRY I and II respectively.

**WEST BENGAL'S REPLIES TO QUERIES RAISED BY THE COMMISSIONERS**

| Grievance Raised | Action Taken Report by State Administration |
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| *Identification of BPL families*<br>The WB government decided to revise the BPL list which was due to be undertaken at the commencement of every five-year plan, on the 21st May 2002. A delay by the MoRD in sending the revised guidelines meant that the BPL revision in 2002 was done using the guidelines and methodology adopted during the revision of pre 1997 BPL (operational) list. This was done using the consumption criteria of Rs. 274.35 per capita per month. The result shows that 36% of the rural population belongs to BPL, which is nearly at par with the permissible limit as per the NSSO Survey. Several complaints regarding anomalies in the process of revision have been received by the Commissioners, which were forwarded to the State administration for follow up. | |
| Several individuals have raised complaints on not being included in the revised lists. Appeals were sent and no response was received from the state administration. | Most of the individual applications sent by the Commissioners for inclusion in the BPL list were rejected due to 'ineligibility'. Complaints regarding revision of the BPL list were not considered since they were not submitted within the stipulated time. These however will be scrutinized and action for inclusion will be taken up after due consideration. |
| Wide Publicity through newspapers, drum rolls etc, was not given to the process of revision of BPL lists. Further, such lists were not displayed in public places and were not therefore available for public scrutiny. | Clear instructions were issued and circulated at the time of revision. Competent officials conducted the procedure at all stages of revision. Further, adequate arrangements were made for scrutiny and disposal of claims and objections raised during the process. |

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| According to guidelines used in the revision process, the poverty line for 1996-97 was estimated to be at Rs.274.35 per capita per month as against the Planning Commission estimate (1999 – 2000, for West Bengal) of Rs. 350.17 per capita per month for rural areas. It thus appears that the State Government has not made any provision for changes in price levels. | |
| Wide complaints were received of families being struck off the BPL list despite no change in their economic situation. | In pursuance of the Supreme Court order dated 5 May 2003, no removal of names will be made from the existing BPL list. |
| The 'Gram Sansad' as a forum was not used by the State Government for public discussion of the BPL list, despite clear instructions that voters must be consulted. The lists it has been suggested therefore have been revised without much public debate. | The revision of the BPL list has taken place in compliance with guidelines. |
| Prior to May 2002, 44% people were considered to be under the poverty line in West Bengal. A report by the Department of Panchayats and Rural Development shows that 36% of the rural population belongs to BPL. The Government it seems has thus decided to reduce the number of people under the BPL from 44% to 36% in an ad-hoc manner. | No instruction was given to remove people from the BPL list because of a pre indicated state percentage given by the Planning Commission. |
| *The Public Distribution System in operation* | |
| Field reports submitted to the Commissioners show that ration shops continue to remain open for only 1-2 days in the week, in violation of Supreme Court Orders. | The State Government has ordered ration shops to remain open from 7 am to 11 am and 2.30 p.m. to 5.30 p.m., with closure only on Sunday afternoons and for the whole day on Mondays. |

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| 65051 currently enjoy benefits against a target of 80000 fixed by the government. Thus 14949 remain to be identified. This is despite numerous applications sent by persons to local authorities requesting to be considered under the scheme. | Against an allocation of 6727 MT of rice, only 4110 MT was lifted for Annapurna beneficiaries during the financial year 2002-2003. The shortfall was mainly on account of lower number of beneficiaries identified in comparison to the targeted number. |
| Beneficiaries under AAY have not received their full entitlement of grain. The % off take of grain under AAY for the last FY was 62.42% for rice and 69.86% for wheat. When compared to the national average of about 83% and 89% respectively this is extremely low. | The Commissioner, Food is now holding monthly coordination meetings with FCI to ensure regular supply of foodgrains for various programmes. Month wise requirement for food grains for various schemes is being worked out and intimated to the FCI for advance planning. |
| As on 20 June 2003, information provided by the MoFCA indicates that of the 793,900 estimated number of AAY families, the state has identified only 740,941. The number of families to whom ration cards have been issued is even lower at 588,499. This is despite numerous applications sent by eligible persons to the local authorities requesting to be considered for these benefits.<br>(Though there appears to be a discrepancy between the number of families that remain to be identified, there is no disputing that the sanctioned number of cards have not been issued.) | The report provided by the Nodal Officer to the Advisor to the Commissioner in West Bengal indicates that 89282 beneficiaries remain to be identified under AAY. |
| Provisional figures released for the year 2002-2003 indicates that the off take of BPL grain as a percentage of that allotted was 23% for rice and 72% for wheat. | |

| *The National Social Assistance Programme* | |
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| No funds were received till September 2002 for the FY 2002-203 under NOAPS and NFBS. This meant that pension holders could not have received money by the 7th of every month regularly. | From the start of the year 2002 the GoI releases funds to the state governments as additional Central assistance instead of allocating money directly to the districts. For this purpose the state government had to open new heads of accounts, which led to the delay due to which no funds could be released till November 2002. |
| Funds released by the center under NMBS reduced from 364.75 lakhs in 2001-2002 to 281.85 lakhs in 2002-2003. Analysis of figures provided for different districts shows that much of the amount allocated was not utilized. In six districts alone the amount unutilised for the year 2002-2003 amounts to over 34 lakhs. This is despite numerous applications for consideration of benefits under the scheme. | |

| *The ICDS and Mid-day Meal Scheme* | |
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| ***The State Government has not implemented cooked mid day meals in all primary schools in the state.*** The nodal officer has not been able to provide a suitable time frame by which the administration plans to implement the scheme throughout the state. | |
| As on July 1, 2003 children in only 1100 schools across the state are receiving cooked meals. Of 9,764,181 children enrolled in 2003-2004 only 178,054 are being covered under the cooked mid day meal programme, i.e. less than 2%. | Cooked mid day meals are being provided in only nine districts on all school days for 25 days in a month. |
| The Education Ministry seems to have allocated Rs.169.09 lakhs as against the Rs.360 crores required to implement the scheme in the entire State. This is only about 0.47% of the required amount. | The state could not extend the scheme to all schools due to Financial Constraints. |

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| **All habitations have not been covered under the ICDS as ordered by the Supreme Court.** | GoI has so far sanctioned 358 ICDS projects in WB of which 24 are Urban ICDS projects. The Planning Commission has expressed their inability to enhance the allocation for the ICDS. Therefore, it would not be possible to sanction any new ICDS projects or additional AWC because of resource constraints. |
| Coverage of pregnant and lactating mothers, children aged 6 months- 3 years and adolescent girls is very low. | Providing supplementary nutrition to adolescent girls will need a budget of approx Rs. 180 crores per annum. A proposal has been sent to the Finance Department but it is doubtful if such large scale funding will be available from the state government. |
| *Improving Transparency* | |
| Supreme Court orders and the list of beneficiaries under various schemes are not being displayed. | According to the Nodal Officer, copies of the Court orders dated 28.11.2001 and 8.5.2002 have been displayed at Panchayat offices and fair price shops. |
| Suggestion to consider taking up extensive advertising through the media, to help spread awareness about schemes has not been initiated. | The view of districts on this issue has been asked for, though it does not seem possible due to feasibility constraints. The financial implication of hiring 'agencies' is high, but people are free to see lists at the GP office. |
| *The Sampoorn Grameen Rozgar Yojana* | |
| Employment under SGRY is very low despite petitions asking for greater works being submitted in several districts. | Effective implementation is hampered in districts that face problems with lifting of rice from FCI godowns. This could be due to:<br>• Non availability of stock in godowns<br>• Non receipt of money from MoRD |

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| | • Non receipt of instructions by local FCI offices from authorities to deliver rice. |
| | Further, the process of engagement of applicants who have demanded employment has been started. |
| Instances of refusal to provide employment to those who are willing to work have been reported to the Commissioners. | Employment is provided as per availability of funds. There has been no case of refusal to provide wage employment but in times of excess supply of labour, employment may be rationed by a process of rotation. |
| Local labour not used on work sites | Works under SGRY are being undertaken as per guidelines with local labour being employed at work sites. |
| *Redressal Mechanism Sought* | |
| Consider paying compensation to those denied their entitlements at the following rates:<br><br>@ 10% for arrears over a month<br><br>@ 25% for arrears over a year<br><br>Rs. 50 per month for all months in which grain under Annapurna Yojana was not received | No compensation of any kind can be paid due to shortage of funds. |

# SPECIAL REPORT OF THE COMMISSIONERS

## SPECIAL REPORT OF THE COMMISSIONERS TO THE HONOURABLE SUPREME COURT

### (A follow-up to the Fourth Report submitted in August 2003, with advice for immediate orders)

The four reports submitted earlier aimed at evaluating the implementation of food and employment related schemes and of the Honourable Court's orders. We wish to reiterate our earlier concern that the right to food cannot become a reality till due recognition is given to the crucial link between it and the right to work as well as the right to information.

This special report follows a series of meetings held with government, as directed by the Hon'ble Court. Many agreements have been reached, such as the discontinuation of grain exports and a ban on the use of labour-displacing machines on public works. **However, some of the orders of the Honourable Court have not been complied with.** The most flagrant cases of non-compliance are discussed below.

### 1 Mid-day Meal Scheme

1.1 There is much evidence of the benefits provided by cooked meals both in terms of higher enrolment rates and better nutritional status of children (including that of the girl child). It was in this view that the Honourable Court ordered all the states to provide cooked meals in all government and government aided primary schools.

1.2 However recent reports show that the midday meal scheme has not been started at all in the states of Bihar, Uttar Pradesh and Uttaranchal. Some states like Jharakhand and Orissa have interpreted an earlier order of the Court[1] directing them to start the scheme in at least one fourth of the districts, to justify the non-implementation in the entire state. Still other states like West Bengal have implemented the scheme in a few blocks and within these, only in a few schools. Further communication reveals that little effort is being taken to ensure that the coverage is universalised to cover all eligible schools.

1.3 We have also been informed that in Mizoram, parents are being asked to contribute towards the costs of mid-day meals. Government orders to this effect appear to have been issued, asking teachers to extract payments or donations from parents to meet the costs of fuel and utensils.

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[1] Order dated 8 May 2003, whereby the bench directed Jharakhand and others to implement the scheme in at-least one fourth of the districts.

***In this light we advise the Honourable Court to:***

A. Direct the states that are yet to initiate cooked mid-day meals in primary schools as well as those that have implemented it partially to comply with the order of November 28, 2001.

B. Issue clarificatory orders that the order dated 8 May 2003 permitting partial implementation was only a temporary measure and the intention is to ensure universal coverage of all government and government-assisted primary schools with midday meal scheme immediately.

C. Direct that the conversion costs needed to provide a hot nutritious meal are not recovered in any form or percentage from the parents of the children enrolled in these schools.

**2 Antyodaya Anna Yojana**

2.1 In the last few months an attempt was made to ascertain the degree to which the interim order directing the Government of India to issue additional Antyodya cards to identified priority groups has been complied with.

2.2 We find however that the guidelines issued by the Governments in this regard are flawed in two respects. This in turn fails to make these priority groups particularly the primitive tribal groups (PTG's) eligible as a 'matter of right', as recommended by the petitioner and directed by the Court[2]. First, they explicitly require BPL status as a pre requisite for eligibility to receive benefits under the expanded programme thereby ensuring that Antyodaya cards are only issued from among existing BPL cardholders. In order to ensure that the poorest are issued cards it is important that individuals from the priority groups be given Antyodaya cards even if they have been inadvertently or wrongfully excluded from the BPL lists.[3] Orders to this effect have already been issued in West Bengal.

2.3 Second, the governments of many states have interpreted the order incorrectly to mean that the number of Antyodaya cards issued in each district should simply be increase from 15% of the existing BPL cards to 23%. Such an automatic increase does not allow for differing

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[2] In the order of 8 May, 2003

[3] This was also agreed upon in a recent meeting convened by the Department of Food and Public Distribution. This meeting, held in New Delhi on 19 September 2003, was called to discuss the recommendations made by the Commissioners in their fourth report.

numbers between districts of the priority groups mentioned in the order. The result is that in areas of intense poverty, where the need for cards is greater, only a small proportion of the vulnerable households are covered. This problem was found, for instance, in villages of Dahi block in Madhya Pradesh and Lakhanpur block in Chattisgarh. Persons representing the commissioners came across many destitute households belonging to the PTG's of Bharia and Hill Korwa respectively who had not been issued Antyodya cards.

2.4 Thirdly, in all states other than MP, Chattisgarh, Rajasthan, Sikkim and Nagaland the process of identification is yet to be completed.

***In the light of the above, we advise the Honourable Court to:***

A. Direct the Government of India and State Governments to issue revised guidelines ensuring that the possession of a BPL card is not a necessary eligibility criterion for inclusion in the expanded Antyodaya programme.

B. Direct the States to ensure that the inclusion of priority groups is done as a matter of right, as per the orders of the Court.

C. Direct that the cards must be issued within four weeks to all primitive tribes and within eight weeks for other priority groups, for those states that are yet to complete the process of identification and distribution of cards.

D. Direct the Government of India to ensure that grain allocations under Antyodaya Anna Yojana are raised as may be required for the implementation of these directions.

## 3. Annapurna and NSAP

3.1 The Annapurna scheme, from being a centrally sponsored one was transferred to the State Plan wef 2002-2003. Since then a number of States including MP, Karnataka, Haryana, Punjab, Arunachal Pradesh, Assam, Chattisgarh, Gujarat, Kerala, Manipur, Nagaland, UP and Uttaranchal[4] have discontinued the scheme, in many cases without providing any alternative. In both the districts of Sheopur and Dhar in MP, our investigators met many elderly persons who were dependent on the

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[4] Grains are allotted by the Department of Food and Public Distribution on receipt of demand from the states. The mentioned states have not been allotted grain under the programme for the year 2002-2003 as per the information received from FCI as on 26.6.2003

Annapurna benefits for their survival but had been abruptly deprived of it since March 2003. Moreover this had been done without providing for any other alternative arrangement. This had been brought to the attention of the state government in July 2003 but field visits made in November showed that no heed had been paid to the Commissioners recommendation that these benefits not be withdrawn.

***In the light of the above we advise the Honourable Court to:***

A. Direct that no scheme covered by the orders of the court (including the National Old Age Pension Scheme and the National Family Benefit Scheme and in particular Annapurna) be discontinued or restricted in any way without the prior approval of the court. If any of the schemes have already been discontinued, the States should reintroduce them with retrospective effect.

B. Direct states, which contend that allocations under Annapurna are not required, since the entire eligible population has been covered under the national and state pension schemes, to establish before the Court that this indeed reflects the situation at the ground level. Adequate proof must be furnished and submitted to the court that no one in the state wishes to get benefits under this scheme.

C. Direct the GoI to make full allocation for NSAP in its budget. At present against a requirement of more than Rs 1400 crores, only Rs 680 crores is being provided, resulting in huge backlog of non-payment in the states.

**4. Moving towards an Employment Guarantee**

4.1 We have mentioned earlier the inextricable link between the right to work and the right to food. The Government of India has in the past also recognised this by conceiving of and announcing the implementation of Jaya Prakash Narayan Employment Guarantee Yojana (JPEGY) in the budget of 2002-03 (Budget speech of the Finance Minister, February 2002) more than a year and a half ago. In particular the programme clearly lays down that any individual in the selected districts, should be able to get employment at the legal minimum wage within one fortnight of registration, and should be eligible for compensation if employment is not thus provided. However nothing has been done since the budget announcement.

***We therefore advise the Honourable Court to:***

A. Direct the Government of India to implement the Jaya Prakash Narayan Employment Guarantee Yojana in the identified 131 backward

districts forthwith and in any case not later than one month from the date of the order.

## 5. Integrated Child Development Services (ICDS)[5]

5.1 It may be recalled that in an order dated 28 November 2001, the Hon'ble Court had directed all states to ensure that there is an Anganwadi centre in "every settlement". The intention of the order was to provide universal access to ICDS. However, the Department of Women and Child Welfare has admitted in a recent meeting, that orders aimed at compliance with this directive have not been issued. Further, the Department maintains that due to financial constraints it is unable to cover "*each* child, pregnant & nursing mother and adolescent girl" under the scheme as directed by the Supreme Court[6]. Requests made by the Department for enhanced financial allocations have been turned down.

5.2 The response of the Department indicates that the Supreme Court Orders have been interpreted within the existing guidelines, rather than as directions that go beyond the same. This is the rationale used for not universalising the scheme either in terms of reaching every "settlement" or in terms of covering "each" beneficiary (child within the age group of 0-6, pregnant and nursing mother, adolescent girls).

5.3 The net result is that only 3.4 crore children are getting the benefit of supplementary nutrition under ICDS. This is nowhere near the number of children in the relevant age group (over 15 crores), or the numbers that are malnourished (8.5 crore), or even the numbers belonging to families below the poverty line (6 crores). The percentage of adolescent girls being covered is much less as the scheme for them has not been operationalised for all Anganwadi centres. The coverage of settlements is also not complete. At present for around 14 lakh habitations, there are only 6.05 lakh reporting Anganwadi centres. Thus the present coverage of the scheme is clearly insufficient to meet the needs of all those who require it.

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[5] The content in this section is largely drawn from a meeting convened by the Department of Women and Child Welfare, held at New Delhi on 25 November 2003. The meeting was called to discuss the recommendations made by the Commissioners regarding the ICDS programme as well as analyze to what extent the Hon'ble Courts orders have been complied with.

[6] Dated 28th November 2001.

We may add that 3.4 crore is the theoretical entitlement, actual coverage is much less, as the states do no provide sufficient funds to meet the cost of nutrition.

***In the light of the above we advise the Honourable Court to:***

A. Issue clarificatory orders that the term " settlement" as used in the Order dated 28 November 2003 pertains to a cluster of households within a village. The order must not be interpreted by the Department, as only operationalizing the present number of sanctioned ICDS projects.

B. Issue orders that the ICDS services be extended to every child, pregnant and lactating mother and adolescent girl, as directed in the order dated 28 November 2003. The services must not be restricted to disadvantaged families or to a predetermined number identified and given to the states.

## 6. The Right to Information

6.1 Documents pertaining to food and employment related schemes are still being routinely denied to the public, and even to the Commissioners investigation teams. Despite the necessary authority, open access to information and records dealing with these schemes is still not readily attainable. The non-accessibility can be on account of continued absence of the concerned authority and thereby his non-availability to those who require his services, blanket refusal to provide the information as well as the phenomenon of prohibitive pricing. A case in point is the price charged for photocopying muster rolls in Madhya Pradesh, which at a steep Rs 20 per page is ten times more than that charged for photocopying one page of most other documents. Two letters addressed to the Chief Secretary of the state by the Commissioners have not even received a response let alone any action. A recent trip to Dhar district of MP several months after the letters were sent has confirmed that no order revising the price has been issued, as was requested by the commissioners.

6.2 Letters have also been sent to all the state governments requesting that documents related to the PDS including the list of beneficiaries and the stock register be made public. Though several state governments have issued standard orders in this regard, actual implementation of these orders at the ground level is not carried out. In November 2003 the Commissioners representatives visited the district of Dhar in MP. Despite having the required authority and thereby being promised the relevant information none was forthcoming. It appears that there is little accountability on not providing the information. Measures must

therefore be taken to ensure that information and documents are available at a cost effective and time bound manner.

***In light of the above, we advise the Honourable Court to:***

A. Direct that all documents pertaining to food and employment schemes, including those mentioned in the interim order of 28 November 2001, should be treated as public documents, open to public scrutiny and accessible for consultation by any individual at any time. In cases where an application is made for a copy of these documents, certified photocopies should be provided within one week of the application. The charge for the photocopies should be no greater than the cost of photocopying and in any case no higher than Rs. one per page.

B. Direct the States and the Government of India to submit an affidavit clarifying the procedure required to apply for these documents, and the available redressal mechanisms when records are not provided on time. This should explicitly include measures to be undertaken on account of refusal to accept complaints and letters of application in addition to required action that must be taken against any official found to be guilty of repeated inaction.

C. Direct the GoI to bring into force the Right to Information Act passed by Parliament and to issue rules and procedure pertaining to the Act.

# FOLLOW UP REPORT OF THE COMMISSIONERS

WRIT PETITION (CIVIL) 196 OF 2001
(PUCL VS UNION OF INDIA & OTHERS)

## FOLLOW UP REPORT OF THE COMMISSIONERS

28 JANUARY 2004

Hon'ble Sir,

With reference to the orders of the Hon'ble Court dated 16th January 2003, we present a follow up report to the one presented by the Advisor to the Commissioners in West Bengal. We hope you find the recommendations put forward in this report, useful in alleviating the situation of hunger in India and in particular the tea estates of West Bengal.

Sincerely,

Dr N. C. Saxena
S. R. Sankaran

# FOLLOW UP REPORT OF THE COMMISSIONERS TO THE HONOURABLE SUPREME COURT, DATED 28 JANUARY 2004

*(This report seeks to give recommendations to help alleviate the situation of hunger and starvation in tea plantations of the West Bengal state, in response to the Report on "Hunger in the Tea Plantations of North Bengal", submitted by the Advisor to the Commissioners in West Bengal[1])*

## Section 1: Introduction

It is well documented that a structured social assistance programme efficiently run, can go a long way in alleviating the problem of hunger and destitution among the poor. Several social security schemes discussed in our previous reports were intended precisely to fulfill this need. It is therefore imperative that the schemes are implemented in full and in a timely manner, so that relief might be provided to all those in need of it. This is in line with the Courts Order dated November 2001, whereby all states are directed to ensure that the mentioned food related schemes are implemented as per central guidelines. It seems therefore that a large part of the picture of hunger and malnutrition, mentioned in the Advisors report can be linked directly to the inefficient functioning of the food related social security schemes.

The Commissioners have seen the report of the Adviser and are in full agreement with the findings, which are fully backed by supporting data and field enquiries. The problem, caused due to the closure of the tea plantations is undoubtedly serious. The labour employed in the tea gardens, have a system of benefits (under the Plantation Labour Act and other relevant statutes) that seems to have now collapsed. This has left the tea garden labour consisting predominantly of tribal communities in a state of destitution.

The following paragraphs will first outline the Commissioners specific recommendations with reference to the situation in the tea gardens of Jalpaiguri. Extracts of the suggestions by the Advisor to the Commissioners are given in italics before our comments. Subsequently more general recommendations pertaining to the state and the country will be given.

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[1]Henceforth referred to as the 'Advisors Report'

## Section II: Specific Recommendations of the Commissioners to Directions Sought in Advisors Report

***2.1 Payment of Compensation:*** *The crisis in the tea plantations is almost 2 years old. It is well known that people there are hungry and dying. The State Government has had the resources in the form of the 9 Central Government Schemes covered under the present Writ Petition. Inspite of all this, it continues to be slow in its response. It has in some cases not ensured proper implementation even of existing schemes let alone provide additional resources...*

The government of West Bengal was apprised of the dismal situation prevalent in the tea gardens on a number of occasions in the past few months. The Commissioners, the Advisor as well as civil society groups wrote several letters to the state administration regarding the situation in the tea estates. However it seems that little effort was made by the state to alleviate the problem[2].

The statewide picture on the performance of a number of schemes is testimony to the wasted opportunities of providing relief at the field level. The performance of the state in lifting grain under the BPL, Antyodya and Annapurna is much below the national average. For the months April to October 2003, the offtake of grain as a percentage of allotment was only 57% and 68% under the BPL and Antyodya schemes respectively. This was much below the all India average of 61% and 82%. A similar picture comes across in the Annapurna scheme. Against a national average of 63% the offtake of grain for West Bengal is a paltry 25%. Moreover, low offtake of grain under the scheme is coupled with incessant delays in identifying beneficiaries under these schemes. According to correspondence received from the state, they are yet to identify 15,000 Annapurna families and over 89,000 Antyodya beneficiaries.

Payment of compensation to the aggrieved parties as a measure of redressal can be an effective one and has been suggested in the past by the Commissioners. A public hearing held in Kotma district of Madhya Pradesh in June 2003 had brought to light several instances of irregularities in the implementation of food and employment related schemes. Allegations of delay/non-payment of wages, irregular distribution of grain under Annapurna, non-receipt of pensions, were some of the complaints received. After asking the state to verify the claims, which were

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[2]To view the letter sent by the Commissioners see Annexure 1

found to hold true, the Commissioners suggested that 'retrospective compensation[3]' be given to the parties. This was done in most of the cases brought to the notice of the Government of Madhya Pradesh.

Even though problems pertaining to low offtake and irregular distribution can be due to delays and administrative failure on account of FCI or the center, problems of non identification and thereby denial of benefits can only be attributed to inertia on the part of the state government. In a system where there is little accountability for administrative failure, an institutionalized system of compensation can prove to be an effective mechanism in ensuring that the state takes all necessary steps to guarantee that 'entitlements' are duly received.

* **We strongly advise the Hon'ble Court to direct the state of West Bengal to pay adequate compensation to the families where death has occurred due to lack of state support in the situation of closure of the tea estates in the state.**

* **We also advise the Hon'ble Court to direct the state of West Bengal to pay compensation to those who have been denied their entitlements under the nine schemes, due to administrative negligence.**

***2.2 Extension of PDS temporarily:*** *As none of the workers are in the BPL category, the facilities available under the PDS do not apply to them. On the other hand it is very necessary that large quantities of subsidized or free foodgrains be made available to them in order to prevent further deaths and hunger....*

It has been mentioned in the Advisers report that prior to closure, the tea garden management gave its permanent workers a 'family ration card' and provided them with foodgrains at Rs 0.4 per Kg. The foodgrain was purchased from the FCI and therefore no additional allocation will be required if the system is to be continued with. As a special case such a transfer should be continued with in the closed tea gardens as well.

Further as mentioned in the report, Gram Sansad meetings in which beneficiaries for AAY are selected have already taken place in Novem-

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[3]The suggested rates of compensation were as follows: @10% and @25% of the amount of arrear for cash payments delayed for a period greater than a month and a year respectively and Rs 50 for every month for which the cardholder did not receive grain under the Annapurna scheme.

ber and December 2003. This will further cause problems since West Bengal is one of the few states to have issued unequivocal orders that identification of additional Antyodya beneficiaries, need not use BPL as a precondition if the family's eligibility is proved otherwise and collectively in a Gram Sansad meeting[4]. It is therefore important to ensure that AAY and Annapurna benefits are initiated using the family cards distributed by the management, till a process of verification of eligibility may be carried out in the tea estates.

Since many Antyodya beneficiaries remain to be identified, families which are found to be eligible in the coming months can the also be included in the BPL lists. This is essential if they are to gain access to other schemes particularly those falling under the National Social Assistance Programme viz. National Family Benefit Scheme, National Old Age Pension Scheme and the National Maternity Benefit Scheme.

* **In light of the above we advise the Hon'ble Court to direct the state of West Bengal to treat the 'family ration cards' already available with the families as temporary BPL ration cards on which subsidized food grains must be provided to them by the State Government. We would further suggest that families that are identified as the aged destitute be given free food grains under the Annapurna Yojana and that all other families should be provided with food grains at Antodaya rates.**

***2.3 Cooked Meals Under MDMS:*** *The State Government should cover all 21 schools in closed gardens with cooked meals under MDMS immediately.*

This issue has been taken up with the state administration on a number of occasions, however little action has been forthcoming. Though the Supreme Court had issued the directive, more than two years back, the state is yet to implement the scheme in all government and government aided primary schools. The state has often cited lack of resources as the reason for non-compliance and token implementation was initiated as late as January 2003. However it appears a question of priority since many of the southern states like Karnataka, Tamil Nadu and Andhra Pradesh have covered all eligible schools under the programme.

At present only 1900 schools across nine districts are being provided the benefit. Of 9,764,181 children enrolled in 2003-2004, only 178,054 are being covered under the cooked mid day meal programme, i.e. less than 2% of the intended beneficiaries. However despite the fact that

Jalpaiguri is one of those nine, partial implementation has meant that the tea estates covered in the report have not been covered. This issue was raised again at a recent meeting of the Commissioner Mr. Sankaran[5] with the Chief Secretary, in September this year where the Commissioner reiterated again that the Courts order must be implemented in *all* eligible schools.

* **We therefore urge the Hon'ble Court to direct the state to implement cooked midday meal scheme in all the schools in the closed tea gardens immediately.**

***2.4 Total Coverage under the ICDS:*** *Many children, adolescent girls and pregnant and lactating mothers are still outside the ambit of the ICDS centers. The State Government should ensure full coverage in the closed plantations.*

While the Hon'ble Court had directed that there be one Anganwadi center in every habitation[6], the Ministry of Women and Child have expressed their inability to provide more funds for this purpose. The Government of India and the Planning Commission are unable to enhance allocations under the ICDS so that coverage of all children (0-6 age group), women and adolescent girls will not be possible.

For the state of West Bengal 13 ICDS projects or close to 1560 Anganwadi centers[7] have been sanctioned but not made operational.[8] This potentially denies the benefits of supplementary nutrition to nearly 1,30,000 infants and children and 19,000 women[9], with the numbers being denied access to basic health services, being significantly more. When compared to states like Madhya Pradesh, Karnataka, Gujarat, Chattisgarh, Kerala and Karnataka, where all sanctioned ICDS projects have been made fully operational, the situation in West Bengal seems dismal.

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[4]A copy of the government order in this regard is given in Annexure 2

[5]A summary record of the discussions is given in Annexure 3

[6]Order dated 28 November 2001

[7]On an average one ICDS project has about 120 Anganwadi centers under its administration

[8]According to the status report of the ICDS as on 30th June 2003, Ministry of Women and Child Development

[9]The average number of children and mothers served per Anganwadi center is about 83 and 12 respectively.

Given the situation described in the report, immediate action needs to be taken to operationalize the remaining Anganwadi centers particularly in the tea estate districts of Jalpaiguri and Darjeeling. Additional efforts to ensure that feeding activity is not plagued with delays and irregularity, as mentioned in the Advisors report, also need to be made.

* **We therefore urge the Hon'ble Court to direct the state of West Bengal to ensure that all sanctioned ICDS projects in Jalpaiguri district be made operational immediately.**

* **We therefore urge the Hon'ble Court to direct the state of West Bengal to ensure that feeding activity in the existing centers be extended to all children in the age group six month to six years, all pregnant and nursing mothers and all adolescent girls in the closed gardens.**

***2.5 Expansion of SGRY:*** *According to its November 2003 report, the State Government has spent 54% of cash and 57% of foodgrains under the SGRY in Jalpaiguri district. Almost half of the funds for 2003-4 therefore remain unspent. The State Government should be asked to generate at least 15-20 days of work every month for every worker in the plantations...*

We have mentioned earlier the inextricable link between the right to work and the right to food. By virtue of being an employment generation programme, implementation of the SGRY is crucial in providing a source of food and livelihood.

Jalpaiguri district has been designated one of the 150 most backward districts in the country and is therefore ideally suited for the implementation of wage and self-employment programmes[10]. Given this the district would prove to be an ideal choice to initiate the implementation of Jaya Prakash Narayan Employment Guarantee Yojana (JPEGY) announced in the budget of 2002-03.[11] As the provisions stand, this would enable individuals to get employment at the legal minimum wage within one fortnight of registration and also be eligible for compensation if employment is not thus provided.

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[10]Source: "Report Of The Task Force On Identification Of Districts For Wage And Self Employment Programmes," Planning Commission, Government of India, May 2003

[11]Budget speech of the Finance Minister, February 2002

It has been shown in the report that the percent utilization of funds and foodgrains in the current financial year according to official records ranges from as low as 18% in the month of April and May to 51% in the month of November. Thus for a large part of the year, even though funds were available they were not used to generate employment. Even where projects were implemented, no more than six days on an average was created per worker.

The situation calls for immediate steps to be taken to ensure that remaining funds are utilized in creating community assets. Additional foodgrains under the SGRY- Special Component may also be allocated and subsequently used in creating more employment. In areas where selection of assets appears to be a problem and where the need is imminent, construction of Anganwadi buildings and kitchen and storage sheds for the cooked meal programme may also be considered.

* **In light of the above we advise the Hon'ble Court to direct the state of West Bengal to ensure that sufficient allocations be made to generate at least 15-20 days of work per worker every month. In case additional funds are required, the Central Government should be asked to make special provisions for the same.**

***2.6 Dealing with defaulters:*** *The owners of the tea gardens have defaulted on payment of wages and rations to workers, leaving each plantation with a backlog of many months. On the other hand the owners still have assets both in the closed garden and in other businesses that can be used to recover these dues.*

* **We are in agreement with the Advisors suggestion that the previous owners assets be liquidated to help disburse all wage arrears and payments due to the workers employed on the tea estates.**

***2.7 Emergency like steps:*** *Considering the huge magnitude of the problem and the extent of deprivation...a sense of urgency is still missing in the Government's efforts though they have now begun to take some small steps.*

On the receipt of preliminary reports of the situation in the tea estates of North Bengal, the Commissioners outlined some immediate measures that the local administration needed to take. In light of the situation in the tea estates of Jalpaiguri, we advise the Hon'ble Court to direct the state of West Bengal:

* **To complete the process of identification of families to be given 'unemployment allowance' of Rs 500 per month as promised by the state government. Payments must be disbursed no later than a month from the date of the order.**

* **To initiate measures to reopen the tea gardens, as this alone will bring lasting relief. It appears that there are close to 300 registered gardens in WB, mostly in Jalpaiguri and Darjeeling districts employing close to 2.5 lakh workers. Ensuring that the tea gardens remain open is the best way of ensuring that they are provided with a continued means of livelihood.**

* **To set up health camps, community kitchens and arrange for mobile vans to provide medical care and to identify severely malnourished children, and others in need of immediate nutrition supplementation. Small inexpensive measures like medical checkup, provision of vitamins and other micronutrients should also be undertaken in all primary schools of the area.**

* **To appoint a senior officer on special duty to verify reports of deaths due to starvation, to act upon any complaints received and to look into the progress of food and food related social security schemes operating in the tea plantations over the past nine months.**

## Section III: General Recommendations

***In light of the issues described in this and previous reports, we advise the Honourable Court to:***

* Direct the Government of West Bengal to initiate cooked mid-day meals in all government and government aided primary schools in compliance with the order of November 28, 2001 immediately. Further consider issuing clarificatory orders that the order dated 8 May 2003 permitting partial implementation was only a temporary measure and the intention is to ensure universal coverage in the state.

* Direct the Government of West Bengal to complete the process of identification and distribution of Antyodya ration cards within four weeks. All efforts must be made to ensure that all priority groups are given these cards, with particular emphasis on the Primitive Tribal Groups of 'Birhor', 'Lodhas' and 'Totos.' In addition special efforts to identify eligible families in the tea estates of the districts of Darjeeling and Jalpaiguri must be made.

* Direct the Government of West Bengal to issue orders to complete the process of identification and distribution of the cards under the Annapurna scheme. Distribution of grain to such designated households must start by February 2004. In addition special attention to identify aged destitute families not receiving pensions in the tea estates of the districts of Darjeeling and Jalpaiguri must be made.

* Direct the Government of West Bengal to initiate the process of operationalizing all remaining sanctioned ICDS projects. Efforts should be made to resume feeding activity as well as other health and referral services at the earliest.

* Direct the Government of India to implement the Jaya Prakash Narayan Employment Guarantee Yojana in the identified 131 backward districts forthwith and in any case not later than one month from the date of the order. The programme may be initiated in the districts of West Bengal including Jalpaiguri from where it can be implemented in all the selected districts.

* Direct all states are to provide compensation at the following rates if proof of administrative negligence/ corruption is found to hold true, in cases where people have been denied their entitlements.

*For all food related schemes that deal with payments in cash viz wage payments under SGRY, pensions, National Family Benefit Scheme, National Maternity Benefit scheme:*

@10% of the amount of arrear for cash payments delayed for a period greater than a month

@25% of the amount of arrear for cash payments delayed for a period greater than a year

*For payments made through transfers of grain viz wage payments made in grain under SGRY, mid day meal scheme, entitlements of BPL, Antyodya and Annapurna through the public distribution system:*

Entitlement of grain * Price used for accounting purposes, for every month the cardholder did not receive grain under the scheme.[12]

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[12]For e.g. non-receipt of Annapurna grain for three months would entitle the card holder for compensation of Rs 150 in compensation (10*5*3)

## Section IV: Special Report Submitted in December 2003

The recommendations given above were with special reference to the state of West Bengal only. However an earlier special report submitted to the Court in December 2003[13] contains measures that have nation wide applicability in order to ensure that 'the right to food' truly becomes a reality. In particular the Commissioners sought the intervention of the court on to ensure that previous directions are complied with. Directions to states that are yet to initiate cooked mid-day meals in all primary schools and those that are yet to complete the process of identification of additional Antyodya cards were sought from the Court. Orders to implement the JPEGY and the Right to Information Act were also suggested to the Court.

**We request the Honourable Court to consider this report of the Commissioners and issue the directions sought for, therein.**

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[13]"Special Report Of The Commissioners To The Honourable Supreme Court," November 2003

# SUMMARY REPORT OF THE COMMISSIONERS

WRIT PETITION (CIVIL) 196 OF 2001
(PUCL VS UNION OF INDIA & OTHERS)

# SUMMARY REPORT OF THE COMMISSIONERS

12 FEBRUARY 2004

Hon'ble Sir,

With reference to the Hon'ble Court's request dated 6th February 2004, we present a summary report highlighting the issues raised by the Commissioners in their previous reports submitted to the Court. This documents also contains the status of compliance of the centre and states and recommendations to alleviate the situation of hunger and starvation in the country.

Sincerely,

Dr N. C. Saxena
S. R. Sankaran

# SECTION I
# SUMMARY OF MAIN ISSUES RAISED IN THE COMMISSIONERS REPORTS[1]

| S.No | Issues Raised in Commissioners Reports | Reference |
|---|---|---|
| **I – Midday Meal Scheme** **Court Order dated 28 November 2001: All government and government aided primary schools to be covered under the cooked midday meal scheme within six months** | | |
| 1.1 | **No Implementation** of the cooked midday meal scheme in Bihar, Jharakhand, Uttar Pradesh, Haryana and Assam despite court order dated more than two years ago. | Fourth Report Pgs 4-7 and map |
| 1.2 | **Token/ Partial implementation** in West Bengal, Orissa, Delhi, Punjab, Chandigarh, Arunachal Pradesh, Uttranchal, Himachal Pradesh, Mizoram and Meghalaya. | Third Report Pgs 6-8 Second Report Pgs 2-10 |
| 1.3 | **Qualitative improvements needed** in the content of meal and in the provision of basic facilities like cooking sheds and storage space. This calls for all states to increase financial allocations for the same. Budgetary allocations vary from Rs 0.50 in Rajasthan to Rs 1.34 per child in Karnataka and Tamil Nadu and even higher in some states. Research studies have shown that significant improvements in the quality of meals can be achieved by modest increases in financial allocations.<br><br>Expert Studies also show that simple health interventions (Deworming, provision of iron tablets, vitamin A etc) | Fourth Report Pgs 4-7 |

[1] Unless otherwise stated the reference key is as follows; Follow up Report of the Commissioners dated January 2004, Special Report of the Commissioners dated December 2003, Fourth Report of the Commissioners dated August 2003, Third Report of Dr Saxena dated April 2003, Second Report of Dr Saxena dated February 2003, First Report of the Commissioners dated October 2002.

| | | |
|---|---|---|
| | linked with midday meals can have a major impact on child nutrition. Such interventions are being used successfully in Gujarat with it costing only Rs 15 per child per year. | |
| 1.4 | **Parents asked for contributions** in cash and kind to meet conversion costs. In particular complaints have been received from Maharashtra and Mizoram. | Special Report Pgs 1-2 |
| 1.5 | **Caste discrimination** in the appointment of Dalit's as cooks. Recent studies and reports sent to the Commissioners indicate evidence of this in Rajasthan, Karnataka and Chattisgarh. | Fourth Report Pgs 4-7 |
| Although the center in a meeting at Krishi Bhawan in September 2003[1], agreed to issue fresh guidelines and orders to the states, to look into the possibility of reservation at the state level for Dalits, allowing SGRY funds to be used for construction of kitchen sheds and SHG's for cooking and distribution of health supplements, no further action has been forthcoming. | | |
| **II – Integrated Child Development Services (ICDS)**<br>**Court Order dated 28 November 2001: Every settlement to have a disbursement center And every child aged 0-6, every pregnant and nursing mother and every adolescent girl to be covered under the ICDS** | | |
| 2.1 | **Coverage not extended to all settlements:** For around 14 lakh habitations, there are only 6.05 lakh reporting Anganwadi centres. The Department of Women and Child Development has interpreted the Supreme Court Order within the present guidelines, which apply to specific project | Special Report Pgs 5-6 |

[2] Source: Minutes of the meeting held between the Commissioners and all concerned Departments on 29th September 2003 at Krishi Bhavan, submitted to the Court at an earlier date.

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| | areas and do not call for extension of Anganwadi's to all villages, let alone "settlements" (a term not recognized in the guidelines). They maintain that only existing sanctioned centers will be operationalized over time[1]. | |
| 2.2 | Coverage not extended to all eligible beneficiaries: **The result is that only 3.4 crore children are getting the benefit of supplementary nutrition, which is the theoretical entitlement with actual coverage being much less, as the states do no provide sufficient funds to meet the cost of nutrition under ICDS. This is nowhere near the number of children in the relevant age group (over 15 crores), or the numbers that are malnourished (8.5 crore), or even the numbers belonging to families below the poverty line (6 crores). The percentage of adolescent girls being covered is significantly less as the scheme for them has been sanctioned in only 2000 blocks as against over 5700 blocks for the country as a whole. The number of operational projects would be even lower.**<br><br>The Department of Women and Child Development has agreed that not every beneficiary stipulated in the Courts order is covered under ICDS. They maintain that this is because the guidelines permit the scheme's services to be extended only for "disadvantaged families". Resource constraints do not allow for the possibility of ensuring coverage as per the Court's order[3]. The Department's recent requests for additional resources have been turned down. | Fourth Report Pg 9<br><br>Third Report Pgs 12-14 |

[3] Source: Minutes of the Meeting held between the Commissioners and the Department of Women and Child Development, on 25th November 2003 at Shastri Bhavan

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| 2.3 | **Significant inter state disparity in the coverage of ICDS:** Against the central norms of approx. 100 beneficiaries per center per 1000 population under the supplementary nutrition programme, the states of Bihar, Uttar Pradesh, Tamil Nadu, Assam, Gujarat and Andhra Pradesh have an average of less than even the All India average of 38. These states are clearly not allocating enough to ensure the provision of this service to even the basic minimum. | Fourth Report Pg 9 |
| 2.4 | **Bogus Reporting:** Severe underreporting of malnutrition in the states of Maharashtra and Orissa with stark differences in the data collected between the NFHS and that reported by the districts, which is much lower. | Third Report Pg 9 |
| **III - Antyodya Ann Yojana**<br>**Court Order dated 28 November 2001: Six identified priority groups including primitive tribes, widows, destitute aged men and women households with disabled adults and those with no assured means of subsistence, to be given Antyodya cards** | | |
| 3.1 | **Priority groups have not been given cards as a 'matter of right.'**<br>Firstly top down fixed quotas have determined the number of cards with no flexibility to distribute more cards if eligibility is otherwise proved, despite the courts orders that *all* persons falling in these categories be given Antyodya cards. Many instances of deserving families being left out in states like Maharashtra, UP and MP were seen in recent field visits.<br><br>Secondly little effort has been made to identify potential beneficiaries according to areas of concentration of priority groups. For a number of states including Haryana, Meghalaya and Uttranchal, the number of Antyodaya cards issued in each district has | Special Report Pgs 2-3<br><br>Fourth Report Pgs 10-13<br><br>Third Report Pgs 11-12 |

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| | simply been increased from 15% of the existing BPL cards to 23%. Such an automatic increase does not allow for differing numbers between districts of the priority groups mentioned in the order. The result is that in areas of intense poverty, where the need for cards is greater, only a small proportion of the vulnerable households among the priority groups are covered. This problem was found, for instance, in villages of Dahi block in MP and Lakhanpur block in Chattisgarh and among the Katkari Primitive Tribal Group in Maharashtra. | |
| 3.2 | **BPL status is insisted upon as a precondition** to receive Antyodya cards. Central Guidelines make BPL an eligibility criteria which leads to the exclusion of many destitute families since the distribution of BPL cards has been fraught with errors of exclusion of deserving families. | Special Report Pgs 2-3<br><br>Fourth Report Pgs 10-13 |
| 3.3 | **Delay in many states in completing process of identification and distribution of Antyodya cards.** The process has been completed in only five states of MP, Chattisgarh, Rajasthan, Sikkim and Nagaland. | Special Report Pgs 2-3<br>Fourth Report Pgs 10-13 |
| **IV – Employment Programmes** | | |
| 4.1 | **No efforts have been made to initiate the Jaya Prakash Narayan Employment Guarantee Yojana** (JPEGY) announced during the budget of 2002-2003. This scheme was envisaged to provide a minimum of 100 days of guaranteed employment in the 131 poorest districts of the country. Given the crucial link between the right to food and the right to work, this scheme would have been instrumental in helping the situation of hunger in these areas. | Special Report Pgs 4-5<br><br>Fourth Report Pgs 16-18 |

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| 4.2 | **Large scale mechanization** and use of labour-displacing machinery in employment relief work found in the states of MP, UP and AP. | Fourth Report Pgs 16-18 |
| 4.3 | **Non-payment of minimum wages** in SGRY and other relief works in UP and MP. | Fourth Report Pgs 16-18 |
| 4.4 | **Non Implementation of the Courts Orders to double SGRY allocations** for the months of May, June and July, 2003 | Fourth Report Pgs 16-18 |
| 4.5 | **Corruption and Consequent Fudging of Muster Rolls** found in employment works undertaken in UP, Orissa and MP. | Fourth Report (state reports) Second Report |
| 4.6 | **Low offtake of grain and utilization of funds under SGRY** leading to provision of little relief to the destitute. Against a national average of 76% (2002-2003) the percentage utilization of funds was below average in the states of West Bengal, UP, Uttranchal, Sikkim, Meghalaya, HP, Assam, Jharakhand and Bihar. A similar picture emerges for the offtake of grain under the scheme. Against the national average of 68%, the performance of WB, Uttranchal, Tripura, Sikkim, Meghalaya, Mizoram, Bihar, Assam and Jharakhand was much below average. | Fourth Report (state reports)<br><br>Third Report Pgs 17-19<br><br>Second Report Pgs 10-14<br><br>First Report |
| 4.7 | **Arrears in wage payments** were found in field investigations done in Maharashtra, UP and MP. In many places in Maharashtra, instances of grain coupons not being honoured, were encountered by the Commissioner Mr Sankaran himself. | |

**V – NSAP, NMBS and Annapurna**

**Court Order dated 28 November 2001: NOAPS, NFBS and NMBS to be implemented as per guidelines, Pensions to be made by the 7th of each month and Annapurna beneficiaries to be identified and distributed grain**

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| 5.1 | **Annapurna Scheme has been discontinued** and benefits withdrawn in many states including MP, Karnataka, Haryana, Punjab, Arunachal Pradesh, Assam, Gujarat, Kerala, Manipur, Nagaland, UP and Uttaranchal[2] in many cases without provision of any alternative. Commissioner's recommendation to start the scheme, particularly in Madhya Pradesh, has not been implemented. | Special Report Pgs 3-4<br><br>Fourth Report Pgs 14-15<br><br>Third Report Pgs 14-16 |
| 5.2 | **Government of India has reduced allocation for NSAP** every year in the budget. The total allocation for all the three schemes for 2003-04 is only Rs 676 crores, which includes about 50 crores for Annapurna, as against a requirement of 1482 crores excluding Annapurna, resulting in huge backlog of payment.<br><br>In Bihar the number of identified pensioners has come down from 7.7 lakhs in 1997-98 to only 4.9 lakhs in 2002-03, because of insufficient releases. Likewise in WB as against a requirement of Rs 3100 lakhs to disburse payments to present number of beneficiaries, the allocation from the Government of India is only Rs 2500 lakhs. Under NMBS, against a requirement of Rs 290 crores only Rs 52 crores was released in 2002-2003. In the case of WB, there were 14012 candidates out of whom only 8000 beneficiaries could be paid due to receipt of insufficient funds from the Government of India. This was despite repeated requests by the state to the center to allocate more funds. Under-funding leads to poor identification which leads to further reduction in allocation establishing a vicious circle. | Special Report Pgs 3-4<br><br>Fourth Report Pgs 14-15 |

[4] Grains are allotted by the Department of Food and Public Distribution on receipt of demand from the states. The mentioned states have not been allotted grain under the programme for the year 2002-2003 as per the information received from FCI as on 26.6.2003

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| 5.3 | **Coverage under social security pensions and Annapurna is inadequate:** Coverage under pensions should be doubled so that all aged destitute are covered under the programme. Amount paid needs to be increased to Rs 250 from Rs 75 presently and the number of pensioners be doubled. Of all the schemes pensions appear to be distributed with greater efficiency and attracting less corruption. There is thus a need to consider expanding the scheme from present levels. | Fourth Report Pgs 14-15<br><br>Third Report Pgs 14-16<br><br>Second Report Pg 16 |
| 5.4 | **Long delay in the distribution of entitlements by states.** Field visits to MP and UP have shown that pensions are not distributed every month. In Bihar for example no disbursement of pensions had happened till mid-August due to a delay in receiving cabinet approval, which led to a delay of more than two months. In the case of NMBS the benefits atleast in the states of UP, Bihar an MP are often given after delivery of the child, which is against the guidelines. In NFBS too, there is a backlog of two years in payment of the requisite amounts in Bihar. | Fourth Report Pgs 14-15 |
| **VI – Targeted Public Distribution System (TPDS)** | | |
| 6.1 | **Problems in selection and identification of BPL families** in the most recent survey carried out by the states. Many cases of incorrect selection with deserving families being excluded were seen in field visits made to the states of Maharashtra, UP and West Bengal.<br><br>This assumes magnified proportions because failure to receive BPL status denies them other benefits as well. This is because BPL status is used as a precondition for entitlement to Antyodya, NFBS, NMBS, | Fourth Report Pgs 8-11<br><br>Third Report Pg20-21<br><br>Second Report Pgs 14-16 |

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| | NOAPS, as well as a wide and increasing range of other schemes. | |
| 6.2 | **Refusal by states to distribute ration cards to the urban destitute** including the urban homeless, migrant labour and destitute women and children. The states of West Bengal, Haryana, Maharashtra, Goa, Karnataka, Kerala, Delhi and Assam have refused to issue ration cards to the urban homeless due to lack of proof of address. | Fourth Report Pgs 18-19<br><br>Third Report Pg20-21 |
| 6.3 | **Low Offtake of BPL grain:** No state was able to assure the full entitlement of 420 Kgs of grain to every BPL household in the year 2002-2003. However some states performance was particularly bad. States like UP, Bihar, West Bengal, Jharakhand, Orissa, Uttranchal, MP and Chattisgarh performed below average (50 kg per BPL person per year). The average offtake of grain as a percentage of allotment was only 59% in the year 2002-2003 for the country as a whole. Performance by states is adversely affected by unreliable BPL lists, overcharging, corruption, leakage of grain, irregular opening of ration shops and distribution of grain, inability of households to buy grain in installments and inability to pick up quota's from the FCI due to lack of administrative capacity and infrastructure. | Third Report Pgs 8-11 |
| **VII – Exports** | | |
| 7.1 | **Exports continue** despite several reassurances that exports at the cost of expansion in domestic grain based welfare schemes will not be done. This situation is concurrent with one where increases in allocation in Annapurna, SGRY and Antyodya are not considered despite availability of grain for export. | Fourth Report Pg 20 |

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| | Between April 2002 and June 2003 more than 15 million tones of grain was exported from India at almost BPL prices. If the grain exported in the year 2002-2003, had been used for welfare schemes like the midday meal and SGRY, their coverage could have been doubled. The Department of Food and Public Distribution in personal communication have refused to increase allocations under relatively successful schemes like Antyodya at the cost of reducing exports. Subsequently at a meeting in Krishi Bhawan though agreement was reached about freezing exports, they continue presently, unabated. | Third Report Pg 5 |
| **VIII – Transparency and the Access to Information** **Order dated November 2001: Order's to be translated in regional languages and English and prominently displayed. List of all beneficiaries and information about various schemes to be displayed to ensure transparency and publicized in Doordarshan and AIR. Further gram sabhas are entitled to conduct social audits of all Food/Employment schemes and report instances of misuse of funds on which appropriate action must be taken by concerned authorities. Order dated May 2002: Gram Sabhas are empowered to monitor the implementation of the various schemes and to have access to all relevant information.** | | |
| 8.1 | **Documents pertaining to food and employment related schemes are routinely denied** to the public and even to representatives of the Commissioners appointed by the Court.<br><br>Field visits to MP & UP by the Commissioners team revealed the difficulties and near impossibility in accessing documents. Since corruption in the schemes can often be proved from documents like muster rolls, stock registers etc they are heavily guarded. | Special Report Pgs 6-7<br><br>Fourth Report Pgs 21-23 |
| 8.2 | **Prohibitive pricing of documents** including | |

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| | muster rolls continues despite Commissioners interventions to prevent the same. This is an easy way of dissuading public participation in governance. | |
| | In MP, while two rupees per page is charged for photocopying one page of most documents, ten times more is charged for photocopying muster rolls. The government of Madhya Pradesh has not responded to the Commissioners recommendations that the cost must be reduced to reduce the cost of photocopying and no greater than Rs 1 per page. Two letters addressed to the Chief Secretary of the state, have not received a response let alone any action. | Special Report Pgs 6-7<br><br>Fourth Report Pgs 21-23 |
| 8.3 | **Right to Information Act passed by Parliament is yet to be brought into force** with many state governments not introducing the right to information laws. | |
| 8.4 | **Dissemination of information;** Details like knowledge of entitlements list of beneficiaries, Supreme Court orders in local languages, issue prices of grains, stocks of rations received continue to be hidden and not made public. Such details are still not displayed in prominent locations like ration shops, panchayat bhawan etc, despite Court orders to do so.<br><br>Field visits made to MP revealed instances where even the authorities at the block panchayat were unaware of the Supreme Court orders. Knowledge of one's entitlements is a first step towards greater accessibility and consumption of entitlements. | Special Report Pgs 6-7<br><br>Fourth Report Pgs 21-23<br><br>Third Report Pgs 22-24<br><br>Second Report Pg 17 |
| | **IX – Follow Up Report on the situation of hunger in the tea estates of West Bengal** | |

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| 9.1 | **A recent study done in the closed tea estates of North West Bengal revealed the states inability to provide food security for the destitute, who were initially covered under welfare schemes provided by their employers.**<br><br>The report brought out instances of deaths among children and aged due to hunger and starvation in the tea plantations. The report submitted by the Advisor showed that the cooked midday meal programme had not been started, operation of ICDS centers was rare and irregular in the areas where they had been sanctioned, employment provided under SGRY was almost nil and coverage was inadequate and erratic under the public distribution system. This was despite the fact that the state had resources at its disposal under most of the food related schemes. | Follow-up Report |

## SECTION II: RECOMMENDATIONS

In light of the above we advise the Honourable Court to:

### MIDDAY MEAL SCHEME

1. Direct the states that are yet to initiate cooked mid-day meals in primary schools as well as those that have implemented it partially to comply with the order of November 28, 2001 latest by the start of the new academic year in April 2004.

2. Issue clarificatory orders that the order dated 8 May 2003 permitting partial implementation was only a temporary measure and the intention is to ensure universal coverage of all government and government-assisted primary schools with midday meal scheme immediately.

3. Direct the centre to issue orders that under no circumstance must the conversion costs needed to provide a hot nutritious meal be recovered in any form or percentage from the parents of the children enrolled in these schools.

4. Direct the centre to issue orders emphasising that complaints relating to discrimination against Dalit's or in their appointment as cooks and helpers in the implementation of the scheme will be dealt with severely. The centre should also be asked to take measures to ensure (a) reservation of at least 50 per cent for Scheduled Castes in future appointments; (b) reinstatement of cooks and helpers who have been dismissed because of their caste.

5. Direct the state to extend the scheme upto upper primary initially and thereafter till standard ten as per the announcement made by the Hon'ble Prime Minister on 15 August 2003.

6. Direct the states that financial allocation to meet the conversion costs of the scheme must be Rs 1 per child per day at the very least.

### INTEGRATED CHILD DEVELOPMENT SERVICES

1. Direct the centre to issue new guidelines and orders to all states to comply with the Court Order dated 28 November 2001 calling for an Anganwadi centre to be available in every settlement and for coverage of every child under the age of seven, every adolescent girl and every pregnant and lactating women. The centre or the states, must not interpret the order within the context of the guidelines, as the need to

operationalize only the present number of sanctioned ICDS projects and to cover only "disadvantaged families". The services must not be restricted to disadvantaged families or to a predetermined number identified and given to the states.

2. Direct the states to issue orders that all Anganwadi centres sanctioned by the centre must be operationalised immediately.

3. Direct states, also in compliance with the same direction, to ensure that all slums are within convenient reach of an Anganwadi and all urban homeless women and children must be covered under the scheme as well.

**ANTYODYA ANN YOJANA**

*1. Direct the states to accelerate the issue of Antyodaya cards, especially to primitive tribes, in compliance of the 8 May 2003 order. Cards must be issued within four weeks to all primitive tribes and within eight weeks for other priority groups. Widows without support should receive special priority*

*2. Direct the Government of India and State Governments to issue revised guidelines and orders ensuring that the possession of a BPL card not be used as a precondition for inclusion in the expanded Antyodaya programme if eligibility is otherwise proved.*

*3. Direct the Government of India to provide additional Antyodaya cards if the existing cards are inadequate to cover all single women, primitive tribes and other priority groups listed in the order of 8 May 2003.*

**EMPLOYMENT PROGRAMMES**

*1. Direct the Government of India to implement the Jaya Prakash Narayan Employment Guarantee Yojana in the identified 131 backward districts forthwith and in any case not later than one month from the date of the order.*

*2. Direct that the legal minimum wage should be paid on employment works conducted in all circumstances, including conditions of scarcity or relief works.*

*3. Direct the center to issue orders banning the use of labour-displacing machines in wage employment works and to closely monitor its implementation.*

**EXPORTS**

1. Direct the Government of India to reconsider the policy of export of foodgrains and resort to exports only after fully and adequately meeting the food requirements of the people in the country, particularly the poor and vulnerable. The grain meant for exports to be used instead to increase coverage under the Antyodya Ann Yojana and Annapurna so that all members of the priority groups mentioned in the Court order may be covered. The grain must also be used to expand the food for work programme in the poorest districts of the country.

**ANNAPURNA**

*1. Direct that no scheme covered by the orders of the court and in particular Annapurna be discontinued or curtailed in any way without the prior approval of the court. If any of the schemes have already been discontinued, the States should reintroduce them with retrospective effect.*

*2. Direct the states of Madhya Pradesh, Karnataka, Haryana, Punjab, Arunachal Pradesh, Assam, Gujarat, Kerala, Manipur, Nagaland, UP and Uttaranchal to restart the Annapurna Scheme immediately and report compliance to the Court within 8 weeks.*

**NATIONAL SOCIAL ASSISTANCE PROGRAMME**

1. Direct the Government of India and the State Governments to double the coverage of national old age pension.

2. Direct the GoI to make full allocation for NSAP in its budget. At present against a requirement of more than Rs 1400 crores, only Rs 680 crores is being provided, resulting in huge backlog of non-payment in the states. For the National Old Age Pension Scheme the allocation per pensioner from the Government of India should be increased to Rs 250 per month from the present level of Rs 75.

3. Direct the Food Secretary U.O.I. and the Chief Secretaries/Administrators of the States and Union Territories to immediately evolve and implement a strategy to wipe out the entire backlog and to ensure that by the 31st March 2004 the entire allocation is released and utilised.

**TARGETTED PUBLIC DISTRIBUTION SYSTEM**

*1. Direct The Food Secretary U.O.I. to immediately convene a meeting of the Chief Secretaries/Administrators of the States/UT's and to evolve and implement a strategy to ensure that the full entitlement of TPDS grain reaches the poor.*

*2. Seek the response of the Government of India to the recommendations of the High Level Committee on Long Term Grain Policy, as per the order of 8 May 2003.*

*3. Direct the center to issue orders to all states to undertake necessary steps to correct the defective BPL Lists. These lists must be corrected in consultation with the gram sabha, NGO's, civil society at large in a transparent manner. The lists must be placed for scrutiny and revision at the earliest.*

*4. Direct state governments and union territories to carry out annual surveys of urban destitute persons and make arrangements to protect them from hunger. Direct the Government of India to supply free grain for this purpose to state governments, and also to NGOs that are willing to provide cooked meals to the urban destitute.*

*5. Direct the states to issue revised guidelines that all citizens are eligible for a ration card, including the homeless. All state governments should initiate measures to provide ration cards to the homeless.*

**TRANSPARENCY AND ACCESS TO INFORMATION**

*1. Direct that all documents pertaining to food and employment schemes, including those mentioned in the interim order of 28 November 2001, should be treated as public documents, open to public scrutiny and accessible for consultation by any individual at any time. In cases where an application is made for a copy of these documents, certified photocopies should be provided within one week of the application. The charge for the photocopies should be no greater than the cost of photocopying and in any case no higher than Rs. one per page.*

*2. Direct the States and the Government of India to submit an affidavit clarifying the procedure required to apply for these documents, and the available redressal mechanisms when records are not provided on time. This should explicitly include measures to be undertaken on account of refusal to accept complaints and letters of application in addition to required action that must be taken against any official found to be guilty of repeated inaction.*

*3. Direct the GoI to bring into force the Right to Information Act. The Parliament has passed the Freedom of Information Bill 2002 in December 2002. Presidential assent was received on 6.1.03. The Government however is yet to notify this Act or frame the rules and procedure pertaining to the Act.*

*4. Direct the states to ensure prompt and wide dissemination of the directions of the court, including distribution within two weeks to the District Collectors and other officers responsible for implementing the directions of the court. Information about performance of schemes and the progress reports filed with the center must be available on state websites to be accessed by all.*

**COMPENSATION AS A MEASURE OF REDRESSAL**

1. Direct all states to provide compensation at the following rates if proof of administrative negligence/ corruption is found to hold true, in cases where people have been denied their entitlements. This would aim to address the realities of delay in entitlements, wage arrears and in distribution of cards, encountered in many field visits made to different states.

For all food related schemes that deal with payments in cash viz wage payments under SGRY, pensions, National Family Benefit Scheme, National Maternity Benefit scheme:

*@10% of the amount of arrear for cash payments delayed for a period greater than a month*

*@25% of the amount of arrear for cash payments delayed for a period greater than a year*

For payments made through transfers of grain viz wage payments made in grain under SGRY, mid day meal scheme, entitlements of BPL, Antyodya and Annapurna through the public distribution system: Entitlement of grain * Price used for accounting purposes, for every month the cardholder did not receive grain under the scheme.[5]

**APPOINTMENT OF A THIRD COMMISSIONER**

**1. To appoint Mr Harsh Mander, presently Country Director, Actionaid India as the third Commissioner.**

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[5] For e.g. non-receipt of Annapurna grain for three months would entitle the card holder for compensation of Rs 150 in compensation (10*5*3)

# NATIONAL HUMAN RIGHTS COMMISSION PROCEEDINGS REPORTS

# NATIONAL HUMAN RIGHTS COMMISSION

SARDAR PATEL BHAVAN
NEW DELHI

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| Case No: | 37/3/97 – LD |
| Dated: | 17 January, 2003 |
| Name of the Complainant: | Shri Chaturanan Mishra, |
| CORAM: | Justice J. S. Verma, Chairperson<br>Justice Sujata V. Manohar, Member<br>Shri Virendra Dayal, Member |

## PROCEEDINGS

**Background**

The Commission has been dealing with this matter since December 1996 when reports of starvation deaths in the KBK Districts of Orissa were brought to its notice by Shri Chaturanan Mishra, the then Union Minister for Agriculture. The issue was also raised in Writ Petition (Civil) No. 42/97 filed before the Supreme Court of India on 23 December 1996 by the Indian Council of Legal Aid and Advice and Others. On learning that the Commission had taken cognizance of this matter, the Supreme Court made the following observation in its Order dated 26 July 1997:

> "In view of the fact that the National Human Rights Commission is seized of the matter and is expected to give its report after an enquiry made at the spot, it would be appropriate to await the report.
>
> Learned Counsel for the petitioner submitted that some interim directions are required to be given in the meantime. If that be so, the petitioner is permitted to approach the National Human Rights Commission with its suggestion. So far as this Court is concerned, the matter would be considered even for this purpose on receiving the report of the National Human Rights Commission.
>
> We also consider it appropriate to require the Union of India to appear before the National Human Rights Commission to assit the Commission in such manner as the Commission may require for the purpose of completion of the task of the Commission. The learned Addl. Solicitor General undertakes to ensure prompt steps being taken for this purpose."

> Earlier in its Order dated 28 April 1997, the Supreme Court had observed that "The learned Advocate General stated that all directions given by the NHRC even when they are of an interim nature, would be promptly complied with by the State Government."

Pursuant to the Orders of the Supreme Court, the Indian Council of Legal Aid and Advice filed a petition before the Commission on 1 September 1997 making a number of suggestions in regard to interim reliefs to the affected population.

In the light of the communications that it had received, the Commision deputed a team of officers, comprising the Secretary General and the Director General (Investigation), to visit the affected areas for an on-the-spot enquiry into the reports of deaths by starvation. The team visited the districts of Nuapada, Kalahandi and Bolangir on 12 – 14 December 1996, their supporting staff staying in the area until 17 December 1996 to gather further data. In its report dated 2 January 1997, the team asserted that because of the very high level of deprivation existing in the area, along with extensive crop damage, mal-nourishment, inadequate income levels and insufficient out-reach of relief measures, the possibility of deaths having taken place due to prolonged mal-nutrition and hunger compounded by disease could not be ruled out. Indeed, out of 21 deaths investigated, 17 were attributable to such causes.

After considering the report carefully, the Commission therefore called for the comments of the State Government and of the Union Minister for Agriculture on that report. Upon receiving and reflecting upon the responses that were received, the Commission considered it appropriate to conduct in-depth hearings on this entire matter, with the full involvement of all parties concerned, in deciding to proceed in this manner, the Commission had in mind the need to lift the consideration of this matter out of the adversarial and contentious cul-de-sac in which it might otherwise be trapped and to transform it, instead, into a participative and constructive endeavour designed to develop a package of measures that could bring about perceptible improvement in the lives of the affected population in the KBK districts.

The Commission accordingly held 11 hearings between 2 September 1997 and 29 January 1998, in the course of which it examined, inter – alia, economic theories relating to starvation and famine, the economic, social and environmental history of Orissa and the KBK districts in particular – over the past decade, the codes and criteria governing the conduct and reaction of the State Government and the Centre to situa-

tions such as those obtaining in the KBK districts and, above all, the practical measures that could be taken in the interim, for a period of two years – with subsequent dovetailing into long term plans – to end the scourage of deprivation, mal-nutrition and cyclical starvation in the KBK districts.

In its proceedings of 17 February 1998, the Commission set out the concrete interim measures that were required to be undertaken, specifying their details in terms of location, time frames and quantitative targets, the manner of their implementation and the monitoring mechanism that should be set in place in order to ensure the efficiency, integrity and accountability of the efforts that must be made. A practical programme of interim measures was thus evolved and agreed upon by all the parties concerned in a cooperative effort that involve the petitioners, the State Government and the Central Government working together under the guidance and auspices of the Commission. That programme covered the following matters:

(i) Rural Water Supply Schemes;

(ii) Public Health Care;

(iii) Social Security Schemes, which included Old age/Widow/ Disability Pension Schemes, Emergency Feeding Programme, Supplementary Nutrition Programme and the Public Distribution System;

(iv) Water and Soil Conservation Measures.

(v) Rural Development Schemes, such as the Jawahar Rozgar Yojana, Indira Awas Yojana, Million Wells Scheme, Employment Assurance Scheme, etc. The benefits of these schemes were to be maximized by linking them consciously to employment generating projects.

The Commission also requested the State Government to constitute a Committee to examine all aspects of the Land Reform question in the KBK districts.

The Commission asserted that the key to effective implementation of programmes, however well conceived, was their proper monitoring and that this should enhance efficiency, transparency and accountability. The Commission thus recommended the constitution of a State Level

Monitoring Committee headed by the Chief Secretary to guide and supervise the overall effort. The Commission also appointed Shri Chaman Lal as its Special Rapporteur for the KBK districts in order to keep itself fully informed of all developments in respect of these districts and to interact on its behalf with the concerned authorities whether at the State, District or other levels.

The Commission, with the help of its Special Rapporteur, has been monitoring the situation in the KBK districts, on a continuing basis since early 1998. It has, in particular, concentrated on the execution of the interim measures outlined above, examining the quarterly Performance Appraisal Reports relating to the achievement of physical and financial targets. Throughout this period, the working of the Commission has been greatly facilitated by the efforts of its Special Rapporteur who visited the KBK districts on Eight occasions in order to inspect the situation on the ground and to verify the accuracy of the reports submitted to the Commission by the State Government for the verification of these reports on ground. The detailed reports submitted by the Special Rapporteur have been considered by the Commission, together with the response of the State Government on the points made by the Special Rapporteur in 12 hearings of the Commission held between the dates April 1998 and October 2002. On each occasion, specific directions were given as required. This monitoring has continued until the visit of the Special Rapporteur to KBK district in November 2001.

***Hearing of 10 October 2002***

In a hearing on 10.10.2002, the Commission considered the following:

(i) The presentation by Shri Chaman Lal, Special Rapporteur on his report dated 24.12.2001 relating to his visit to the KBK districts from 14-22 November 2001;

(ii) The compliance report dated 4.5.2002 submitted by the Government of Orissa with regard to the points raised in the above mentioned report of the Special Rapporteur;

(iii) The suggestions made by Shri Sanjay Parikh, Counsel for the petitioners, viz his letter dated 7 October 2002, regarding the Long Term Plan/ Scheme to alleviate poverty in Orissa;

(iv) A submission by Dr. Amrita Rangaami on the nature of the constitutional right involved in the present case and the apparent inconsistency with that right of the response of the state government;

At the conclusion of the hearing, the Commission directed the State government to submit a comprehensive reply covering all the above points by the end of November 2002 (subsequently extended upto 14 December 2002).

Additionally, Shri Jayant Das, Senior Advocate for the Government of Orissa, was requested to organize a meeting jointly with the Chief Secretary and other concerned officers of the Government of Orissa, together with Shri Chaman Lal, Shri Sanjay Parikh and Dr. Rangasami with a view to facilitating a consensus on as many as issues as possible.

Pursuant to the above directions, a meeting was held under the Chairmanship of the Chief Secretary, Government of Orissa in Bhubaneswar on 5 December 2002, which was attended by Shri Chaman Lal, Shri Jayant Das, Dr. Rangasami and the concerned State Government officials. A comprehensive reply of the Government of Orissa formulated on the basis of the deliberations of the above meeting was received by the Commission on 16 December 2002.

***Hearing of 7 December 2003***

The hearing was attended by the Counsel for the petitioners, for the government of Orissa and for the Government of India, Dr. A. Rangasami, Director CSAR, Shri Srinibas Rath, Development Commissioner, Orissa, Shri R. Jamuda, Secretary Revenue, Government of Orissa and Shri N.C.S. Negi, Deputy Secretary, Ministry of Agriculture, government of India.

Shri Chaman Lal gave a brief account of the meeting held in Bhubaneswar and presented the summary of the comprehensive reply furnished by the government of Orissa in response to the directions issued by the Commission on 10 October 2002.

Shri Sanjay Parikh, counsel for the petitiones outlined his ideas on the monitoring mechanism that was indeed in the State to oversee the Revised Long Term Action Plan (RLTAP) for the development of the KBK region.

Dr. Rangasami, in her submission, expressed satisfaction with the outcome of the meeting held at Bhubaneswar. She explained that a paradigm shift was required, both conceptually and administratively to deal with the situation and the provision of relief in areas affected by long term destitution and natural calamities.

In the light of the submissions and presentations made in the hearing of 7 January 2003, the Commission would now like to make the following recommendations:

**Rural Water Supply and Sanitation (RWSS)**

The Commission has noted with satisfaction the 100% achievement of the target of providing one tubewell for 250 population in all the KBK districts and the introduction of the Self Employed Mechanics (SEM) scheme in all the 80 blocks of the region. The Commission expects the authorities concerned to ensure the efficient functioning and success of this innovative scheme. The work of the mechanics has to be supervised and guided by the Department Engineers, tools and spares have to be stocked in all the needed locations in adequate quantity, the regular and timely payment of wages to these workers must be ensured. There should be a monthly review of the functioning of this scheme at the District level and a quarterly review by the State Level Monitoring Committee so that difficulties and bottlenecks, if any, encountered in its operation are detected and addressed well in time.

**Primary Health Care**

The Commission reiterates its earlier directions that vacancies of Medical Officers in KBK districts should never be allowed to exceed 20% of the sanctioned strength. The Commission finds that only 165 doctors have joined out of a total of 246 additional doctors posted to KBK districts. Necessary steps should be taken to make the remaining doctors join the new posts. Despite the categorization of para-medical staff as part of the district cadre, vacancies of pharmacists and staff nurse have continued at some places. Shortage of health workers (male) is being felt in every district. The Commission trusts that the assurances given in the reply to Government will be implemented with sincerity.

The Commission is concerned that diarrhoea has re-emerged as a major killer in the districts of Kalahandi, Koraput, Rayagada, Bolangir, Sonepur and Nuapada. The government reply admits that the situation is alarming in the districts of Koraput and Rayagada where more deaths have occurred in the year 2002 in comparison with the figures of the previous year. There is no doubt that a number of deaths have remain unreported and unrecorded. Although a slight improvement has been noticed in the districts in Sonepur, Kalahandi, Bolangir and Nuapada, the situation is still far from satisfactory. The failure of the government to effectively tackle the re-emergence of diarrhoea speaks poorly the standard of the Primary Health Care provided to the rural areas of these districts. The State Level Monitoring Committee should look into the

matter and order effective measures to counter this entirely avoidable cause of death.

The government reply admits the rampant occurrence and heavy incidence of malaria as a serious hazard in Orissa. Indeed, it states that Orissa accounts for over 20% of the malaria cases and 46% of malaria deaths in the entire country. 210 out of a total 314 CD blocks of the State have been identified as high risk blocks. Since the State Government is not able to tackle this problem effectively due to its poor resource position, it has requested the Ministry of Health and Family Welfare, Government of India, vide letter no. 28516 dated 16 August 2002, to grant 100% assistance for malaria control activities in the KBK districts as is being done in the North Eastern States. The Commission supports this request and recommends the Government of India accords the necessary sanction.

Mobile Health Units (MHUs) have been established and are functioning in all the 80 blocks of the KBK region. The Special Rapporteur has recommended the establishment of an additional MHU in Kosagmunda Block of Navrangpur for providing proper health care to 9 Gram Panchayats (GPs) of the block which remain cut-off for 9 months in a year without any medical cover. The government reply states that a proposal of the Chief Minister, KBK project, for the establishment of 8 additional MHUs, including the one at Kosagmunda mentioned by the Special Rapporteur, is under consideratio0n. the deficiency pointed out by the Special Rapporteur should be removed immediately.

The Special Rapporteur has pointed out the need for opening of 5 additonal Prime Health Sub centers in district Koraput and 2 in district Sonepur. The government reply indicates that a proposal for establishing 152 additional Sub-Centres in the KBK districts which takes care of this matter, has been pending with the government of India for sanction since 1998. This proposal is based on the requirements of the KBK districts as per 1991 Census. As there has been a further increase in population since then, the purpose is fully justified. The Commission accordingly recommends the government of India to accord the necessary sanction to this proposal at the earliest.

**Social Security Schemes**

The Commission had taken immediate cognizance of the observation of the Special Rapporteur, made in December 2002 that there had been an unjustifiable reduction in the scale of rice from 6 kg. to 5 kg. per month per beneficiary under the Emergency Feeding Programme through the

KBK region. It had ordered the restoration of the original scale. The Commission noted that appropriate action was taken in Koraput, Nawrangpur, Kalahandi, Nuapada, Bolangir and Sonepur w.e.f. January 2002. However, the restoration of its scale was affected in Malkangiri from February 2002 and in Nuapada from March 2002. The delay in the latter two districts is regrettable, especially as it concerns food security programme, meant for the most vulnerable groups.

The Commission has considered the explanation offered by the Women and Child Development Department regarding the interruption in SNP and Mid Day Meal (MDM) Programmes. It is hoped that with the transfer of the responsibility for lifting MDM stock from the Civil Suppies Department to the District Social Welfare Officers, such interruptions would not be allowed to recur. The Commission is of the view that this can be ensured only through effective monitoring by the Women and Child Development Department. The Commission has emphasized a number of times the importance of the careful planning of the stocking of foodgrains to ensure that the Food Security Programmes such as Emergency Feeding, SNP and MDM are not allowed to suffer even a slightest interruption. It is unfortunate that despite the assurances given by the Government from time to time, and once personally by the Chief Secretary of Orissa in his appearance before the Commission, such interruptions have taken place. The Commission expects the Chief Secretary, who heads the State Level Monitoring Committee, to view such lapses with seriousness.

The Commission's directions regarding the extension of PDS benefits to the tribal population of Omerkot Block living in the encroached forest villages is still pending. It is seen from the government reply that following the completion of joint verification of 50% of the encroached forest land, a proposal has been forwarded to the government of India for the regularization of 679.608 hectares of pre-1980 encroachments in forest areas as revenue villages. Acceptance of this proposal by according approval u/s 2 of the Forest (Conservation) Act 1980 would benefit 504 families (SCs-24, STs – 424 and others 546) with a total population of 2704. The Secretary, Environment and Forests, Government of India is requested to accord the approval sought by the State government, which is in accordance with their policy of regularizing pre-1980 encroachments on forest land. The joint verification of the remaining pre-1980 encroachments should also be completed early and a proposal for regularization of the affected villages should be sent to the government of India.

**Soil Conservation Programme**

The Commission has been stressing the importance of the Soil Conservation Programme and Watershed Managemnt Schemes which aim at tackling the problem of low productivity, lack of irrigation, a receding water table and soil erosion. These programmes are being executed under departmental schemes such as NWDPRA, IWDP, DPAP and also under the Employment Assurance Scheme (EAS) of the Rural Development Department. The reports of the Special Rapporteur have invariably been critical of the performance of the departmental works. He was repeatedly given to understand by the District authorities that these programmes are suffering because of shortage of funds. The government reply, however, admits that "the utilization of funds in this programme is far from satisfactory. An amount of Rs. 7.60 crores allocated from 1998-99 to 2001-02 has remained unutilized as of 12 December 2002. In addition, a further allocation of Rs. 7.50 crores has been made during the year 2002-03 for this programme". It is regrettable that these programmes are not being executed in accordance with the plans even though funds are available. The participation of the intended beneficiaries in the execution of these programme is of paramount importance.

The assurances given by the Government that these programmes are now being executed under the revised 'Sahbhagita' Guidelines do not seem to have been given effect on the ground. The State Level Monitoring Committees should give special attention to these works in view of their long term importance.

The Commission has noted with satisfaction the progress in execution of the Watershed Management Schemes and the Government's decision to undertake the completion of the water harvesting structure by converging funds available under schemes like SJRY, EAS and FFWP. The Government reply shows that the Collector-cum-Mission leaders have been advised to identify such projects immediately and complete them either under the Food for Work Programme or out of the special Central assistance for the Watershed Development Programme in the KBK districts. Sixty nine such incomplete structures have been taken up for completion or renovation by the Soil Conservation Department in Nuapada, 58 in Kalahandi, 748 in Bolangir and 415 in Sonepur. The adopted course of action, which appears to be ad hoc in nature, calls for thorough monitoring by the State Level Committee.

There are 508 on-going projects under the EAS in the KBK districts with an outlay of Rs. 109.09 crores. The government reply shows that, so far, the government of India have released Rs. 42.83 crores and the

government of Orissa have added Rs. 12.75 crores as the matching State share. Thus, the total assistance released is Rs. 55.58 crores. Obviously, a number of projects under EAS are lying incomplete because the State government has not been able to provide the matching share that is required by it, or satisfy the Central Government about the utilization of money received. This situation needs to be remedied.

**Rural Development Programme**

The Commission recommends that while the allotment of targets and funds under Rural Development Schemes, such as the JGSY, EAS, IAY, SJGSY should be for the whole year, the performance appraisal and monitoring should continue to be made on quarterly basis as has been evolved by the Commission. This will ensure progressive utilization of funds and orderly attainment of targets and avoid the rush of expenditure with consequent loss in the quality of work towards the end of the financial year.

**Afforestation**

The Commission has noted with satisfaction that the funds were released well in time in 2001-2002 and in the current year, and the plantation activities under LTAP with people's participation are continuing smoothly with the Conservator of Forests, Koraput Circle as the Nodal Officer for implementation and monitoring in KBK. As regards the release of foodgrains under the World Food Programme in 2001-02, the coverage was 43.8% of the total mandays generated in 2001-02. The figures for the current year are 25%. The government reply, however, shows that additional stocks of food have been received. The food component must be raised in order to ensure willing participation of the community in this endeavour. Special efforts will have to be made to sustain the interest of the Village Suraksha Samitis until they start getting the benefits of the plantations.

The Commission compliments the Orissa government for transferring of 68 NTFP items to Gram Panchayats (GPs). The Special Rapporteur has reported that due to a lack of interest on the part of the GPs and inability of the district collectors to enforce the Minimum Procurement Price, the tribals are yet to derive the full benefits of this progressive scheme. The successful implementation of the scheme also calls for changes in the Sales Tax Act, Excise Laws, Orissa Gram Panchayats Act and Forest Laws and Transit Rules. The State-level Monitoring Committee should review the actual operation of this scheme and evaluate its impact on the lives of the primary gatherers of NTFP items.

**Land Reforms**

The Commission is happy to learn that the amendment of Regulation 2 of 1956 has since been given the assent of the President and the amended regulation has been published in the extraordinary issue of the Orissa Gazette on 9 September 2002. It is hoped that similar steps to amend the Orissa Land Regulation Act 1960 to ban completely the transfer of tribal land to non-tribals on similar lines will now be initiated as promised earlier.

The Commission has taken note of the repeated instructions issued by the Revenue Department to the District Collectors to detect cases of land alienation and take necessary action to restore land to the original owners and correct the Record of Rights. The government has now constituted Task Forces at the Sub-Divisional-level for this purpose. However, the report of the Special Rapporteur does not present a satisfactory picture of the actual implementation of these instructions. Considering the crucial role of Land issues in the phenomenon of poverty and deprivation in the region, the matter deserves serious attention from the State Level Monitoring Committee. The Commission would also like to see systematic action being taken on the comprehensive recommendations made by the Expert Committee on Land Reforms.

**Distress Sale of Paddy**

The Commission has learnt of the hardships of the farmers of some of the districts of KBK, especially Nuapada and Sonepur, who have been agitating over the demand of the minimum support price of paddy. After considering the report of the Special Rapporteur and the response of the Government, the Commission requests the Government of India to direct the FCI to examine the possibility of purchasing paddy directly from farmers in these districts. The recent decision of the FCI to open 20 Purchase Centres in six districts of Orissa, including 3 in Sonepur in the current kharif year 2003, is encouraging. The Commission requests the FCI to take steps to increase the capacity of godowns in the KBK districts. The Orissa State Agricultural Marketing Board should establish additional Regulated Market Centres to meet the demands of the increasing rice production in the KBK districts.

**Long Term Measures**

In its proceedings dated 17 February 1998, the Commission has noted that its directions would "concentrate primarily on interim measures, leaving for subsequent consideration as may be needed the views of the Commission on long term issues." The Commission has stated that the government of India has already taken up a long-term development project for the KBK region.

In this connection, the government of Orissa had originally launched a 7 year Long Term Plan in 1995-96 for accelerating the pace of development in the KBK districts. In 1998, the government of India advised the government of Orissa to prepare a Revised Long Term Action Plan. The RLTAP was accordingly prepared to cover the period from 1998-99 to 2006-07 with three objectives in view: drought proofing, development saturation and poverty alleviation, and improvement in quality of life of the people in this region.

The RLTAP focuses on the 11 key sectors of Rural Development: Agriculture, Horticulture, Watershed Development, Afforestation, Rural Employment, Irrigation, Health, Emergency Feeding, Rural Drinking Water Supply, Rural Connectivity; and Welfare of SCs/STs.

The financial outlay (Rs. 6251.08 crore) would include both normal flow of funds under the Central Plan (CP) and Centraly Sponsored Projects (CSP) and special funds in the form of additional / special Central assistance received from the government of India.

The government of Orissa has set up a Special Area Development Project KBK with a senior officer designated as the Chief Administrator, with headquarter at Koraput. The Chief Administrator is in overall charge of supervision and monitoring of the projects implemented under the RLTAP in the KBK districts. There is also a Project Level Committee (PLC) under the chairmanship of the Chief Secretary and the State Level Committee (SLC) under the chairmanship of the Chief Minister.

**Monitoring**

The Commission's views on the importance of monitoring, set-out in its proceedings of 17 February 1998, assume additional validity and significance in relation to the proper implementation of the Long Term Action Plan. The Commission hopes that the State Level Monitoring Committee will meet more often, at least once every three months, to guide and monitor the work of various Departments involved in the execution of the development programmes.

The Commission endorses the suggestion made by Shri Sanjay Parikh, counsel for the petitioners, that the Special Area KBK Project should provide for District-Level Committees which could be made directly responsible for the execution of programmes allotted by the Chief Administrator. It is heartening to note that the State Government has responded positively to this idea and the Government reply contains a commitment in this regard. Shri Parikh has further suggested that the

Performance Appraisal Reports of the Districts should be made public and the Chief Administrator should hold public hearings every six months, in each of the KBK districts by rotation. This will inject openness and transparency into the implementation of the long term measures and add the accountability dimension to the exercise. The Commission also accepts Shri Parikh's suggestion that the salient features of all the developmental programmes together with information about the achievement of physical and financial targets, should be shared with the public at the District and Block levels by a suitable display mechanism. Information should also be disseminated to the public through booklets and handouts from time to time. This will ensure that the people's right to information is respected and will also contribute to the process of their empowerment.

The commission takes this occasion to endorse the recommendations made in the 106th Report of the Rajya Sabha Committee regarding the periodical review of the execution of the RLTAP by a Committee of Secretaries to Government of India under the chairmanship of the Cabinet Secretary. In addition, the Commission has noted that there is a consensus among all the parties concerned including the State Government, that NHRC should continue to be involved in the overall monitoring of the programmes. The purpose of this monitoring can be achieved by associating the Special Rapporteur of the Commission with the quarterly meetings of the State Level Committee and his continued visits to the selected districts of the region.

The following requests made by the Counsel for the government of Orissa will be forwarded to the Union Government for ensuring more effective implementation of the RLTAP:

(i) RLTAP should be made an integral part of the 10th Plan document and accorded formal approval in its entirety.

(ii) Year-wise availability of funds should be indicated for the entire 10th Plan period and funds should be released well in advance in order to obviate the ad hoc nature of the current arrangements.

**Special Category Status**

The counsel for the state of Orissa has sought the Commission's intervention in respect of the request of the State Government made to the government of India, that Orissa should be declared a Special Category State in view of its poverty, chronic backwardness, weak Tax Base and the serious debt trap that it faces. The Commission is informed that the

issue is still under the consideration of the government of India. Without taking a position in respect of Orissa as a whole, the Commission would recommend as a minimum, that the KBK region of Orissa should be considered for Special Category Status in view of the persistent problems of chronic destitution, hunger, ill-health, poverty and unemployment affecting much of its population.

**Commendation**

The continuous monitoring of the situation in the KBK districts has enabled the Commission to identify certain district collectors in this region who have shown exception zeal, ability and devotion to duty over the past three years. The Commission would like to take this opportunity to record its appreciation of the performance of the following: Shri P. K. Jena, Collector Kalahandi; Shri S. B. Sahu, Collector Nuapada and Collector Kalahandi; Shri Hemant Sharma, Collector Kalahandi; Shri C. S. Kumar, Collector Malkangiri and Collector Bolangir; Shri D. K. Singh, Collector Rayagada; Shri B. S. Sethi, Collector Sonepur, Collector Rayagada; Shri S. K. Sarangi, Collector Nawarangpur and Collector Bolangir; Smt. A. Sarangi, Collector Koraput; Shri Madhusudan Padhi, Collector Bolangir.

**Right to Food**

Throughout the hearing in respect of this case, the petitioner Dr. Amrita Rangasami, Director, Centre for the Study of Administration of Relief (CSAR), has been raising the fundamental issue of the nature of rights involved in a situation in which deaths occur as a result of starvation or prolonged mal-nutrition. She has asserted that there is a dichotomy between the Constitution of India and the Relief Manuals and Codes of India which govern relief administration. She has argued that while the Constitution recognizes the Right to Food as an integral part of the Fundamental Right to Life, the Manuals and Codes are, more or less, a replication of the Model Famine Code of 1910 under which relief is administered as an act of benevolence on the part of the State and the status of the 'beneficiary' continues to be that of a recipient of State charity.

The Commission has considered Dr. Rangasami's submission most carefully. Article 21 of the Constitution of India guarantees a fundamental right to life and personal liberty. The expression 'Life' in this Article, has been judicially interpreted to mean a life with human dignity and not mere survival or animal existence. In the light of this, the State is obliged to provide for all those minimum requirements which must be satisfied in order to enable a person to live with human dignity, such as

education, health care, just and humane conditions of work, protection against exploitation etc. In the view of the Commission, the Right to Food in inherent to a life with dignity, and Article 21 should be read with Articles 39(a) and 47 to understand the nature of the obligations of the State in order to ensure the effective realization of this right. Article 39(a) of the Constitution enunciated as one of the Directive Principles, fundamental in the governance of the country, requires the State to direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means to livelihood. Article 47 spells out the duty of the State to raise the level of nutrition and the standard of living of its people as a primary responsibility. The citizen's right to be free from hunger enshrined in Article 21 is to be ensured by the fulfillment of the obligations of the State set out in Articles 39(a) and 47. The reading of Article 21 together with Articles 39(a) and 47 places the issue of food security in the correct perspective, thus making the Right to Food a guaranteed Fundamental Right which is enforceable by virtue of the constitutional remedy provided under Article 32 of the Constitution. The requirements of the Constitution preceded, and are consonant with, the obligations of the State under the 1966 International Covenant of the Economics, Social and Cultural Rights to which India is a party. That Covenant, in Article 11, expressely recognizes the right of everyone to an adequate standard of living, including adequate food.

It follows, therefore, that there is a fundamental right to be free from hunger. Starvation constitutes a gross denial and violation of this right. As starvation deaths reported from some pockets of the country are now invariably the consequence of misgovernance resulting from acts of omission and commission on the part of public servants, they are of direct concern to the Commission under the provisions of the Protection of Human Rights Act, 1993.

Persons living in conditions of poverty and hunger in areas such as the KBK districts have often been found to be suffering from prolonged hunger and mal-nutrition. Even when their deaths cannot, in a strictly clinical terms, be related to starvation, the tragic reality remains that they often die of prolonged malnutrition and the continuum of distress which has, inter alia, rendered them unable to withstand common diseases such as malaria and diarrhoea. The situation is all the more painful in view of the fact that granaries of the Food Corporation of India are overflowing – a matter that is, at present, under consideration of the Supreme Court.

The Commission, therefore, agrees with Dr. Rangasami's view that the present practice of insisting on mortality as a proof of starvation is wrong and needs to be set aside. In the view of the Commission, therefore, there are obvious policy implications as far as the obligations of the State are concerned. The Right to Food implies the right to food at appropriate nutritional levels. It also implies that the quantum of relief to those in distress must meet those levels in order to ensure that the Right to Food is actually secured, and does not remain a theoretical concept.

The Commission also agrees with the petitioner that destitution and the continuum of distress should be viewed as the necessary condition for the prevalence of starvation. There is thus a concomitant need for a paradigm shift in public policies and the Relief Codes in this respect.

Dr. Rangasami acknowledges that the State of Orissa has revised the objective of relief administration to mean the eliminiation of destitution. However, it has not made the paradigm shift from the domain of benevolence to that of the right of a citizen. She has argued that the government of India's current conceptualization of calamity as well as the season of its prevalence, has limited relief to the short term only. In contrast, a human rights approach to food and nutrition, would imply that the beneficiaries of relief measures should be recognized as "claim holders". Viewed from this perspective, the prevalence of distress conditions threatening starvation constitutes an injury requiring the imposition of a penalty on the State. The penalty would be claimed for the affected groups as a whole prevalence, has limited relief to the short term only. In contrast, a human rights approach to food and nutrition, would imply that the beneficiaries of relief measures should be recognized as "claim holders". Viewed from this perspective, the prevalence of distress-conditions threatening starvation constitutes an injury requiring the imposition of a penalty on the State. The penalty would be claimed for the affected groups as a whole rather than on the basis of individual claims. The Commission finds much merit in this view. Indeed, it is of the opinion that the remedy provided under Article 32 of the Constitution applies to groups no less than to individuals.

Dr. Rangasami has accordingly suggested the amendment of paragraphs 163, 164, 168B and 169 of the Orissa Relief Code in order to bring that Code in line with the Constitution of India. She has specifically proposed that it be reformulated to accomplish the following:

(i) a paradigm shift from the domain of Benevolence to that of a Right;
(ii) a change from the assessment of harvest to the assessment of hunger;
(iii) a shift in the timing of State – intervention to the hunger season; and
(iv) a devising of the terms of cognizance for starvation and destitution.

The Commission is informed that the State Government has constituted a Committee headed by the Agricultural Production Commissioner (APC) and other officers as well as non-official members to discuss and deliberate on the suggestions made by Dr. Rangasami on amendment of the Orissa Relief Code.

Given the views of the Commission as explained above, it would like to see rapid progress in the work of the Committee and it would also like to be kept informed of its efforts. The outcome of these efforts could have far reaching and positive consequences both for Orissa and, based on its example, the rest of the country.

Dr. Rangasami has also suggested the following for the consideration of the Government of India:

(i) the need to revise the present criteria used to determine the relief that is provided – she has proposed that the 'basket' of relief provided should be prescribed in terms of adequate nutritional requirements and not in fixed monetary terms. This would ensure automatic revision of the outlays required to keep pace with rising costs.

(ii) The devising of the criteria for the provision of assistance to small farmers in a manner that it is linked to the elimination of destitution and the halting of distress migration, distress sale of crops, labour and land, and protection against impoverishment.

The Commission sees much value in these suggestions which implicitly raise serious questions regarding the quantum of resources realistically required for the Calamity Relief and the method of their utilization. The Commission, therefore, requests Dr. Rangasami to develop these ideas further and to provide the Commission with a paper on this subject so that the views of the Government of India can be obtained on them.

In concluding these Proceedings, the Commission would like to observe that they are being held at a time when, universally, there is a demand that every effort be made by the State and by civil society to eradicate the poverty and hunger that constitute an affront to the dignity and worth of the human person. First and foremost among the United Nations Millenium Development Goals (MDG) is the pledge made by all Heads of State and Government to halve, by the year 2015, the proportion of the world's poor and of people who suffer from hunger. Given the circumstances of our country, India has a special responsibility in this regard. The prevalence of extreme poverty and hunger is unconscionable in this day and age, for not only does it militate against respect for human rights, but it also undermines the prospects of peace and harmony within a State. For all these reasons, the Commission will continue to be deeply involved with the issues raised in these hearings in the period ahead.

The Commission would like, once again, to place on record its deep appreciation of the most able and constructive contribution that it has received throughout the hearing of this matter from the learned counsels appearing before it: Shri Sanjay Parikh for the petitioner, Shri Jayant Das and Shri Raj Kumar Mehta for the State Government of Orissa, and Shri Ajay Kumar Vali for the Union of India. The Commission also reiterates its gratitude to Dr. Amrita Rangasami, Director, CSAR for the insights and thoughts she has brought to bear to the consideration of this matter by the Commission.

A copy of these Proceedings may be forwarded to the Registrar General of the Supreme Court of India for being placed before the court in Writ Petition (Civil) No. 42/97, pursuant to orders therein dated 28 April 1997 and 26 July 1997.

**(Justice J.S. Verma)**
**Chairperson**

**(Justice Sujata V. Manohar)**
**Member**

**(Virendra Dayal)**
**Member**

**NATIONAL HUMAN RIGHTS COMMISSION**
SARDAR PATEL BHAVAN
NEW DELHI

Case No : 37/3/97 – LD
Name of the Complainant : Shri Chaturanan Mishra,
Union Minister of Agriculture

Reference Case No. 2 of 1997 – Writ Petition (Civil) No. 42/97
Indian Council of Legal Aid & Advice & Others

Vs.

State of Orissa & Others
(from the Supreme Court of India)

Date: 17 February 1998

CORAM: Justice Shri M.N. Venkatachaliah, Chairperson
Shri Virendra Dayal, Member
Justice Shri V.S. Malimath, Member

## PROCEEDINGS

*"Starvation is the characteristic of some people not having enough food to eat. It is not the characteristic of there being not enough food to eat"*
— Amartya Sen in "Poverty & Fame", 1981

## I

1.1 On 23 December 1996, the Indian Council of Legal Aid and Advice and Others filed Writ Petition (Civil) No. 42/97 before the Supreme Court of India, under Article 32 of the Constitution, alleging that deaths by starvation continued to occur in certain districts of Orissa[1] despite the directives given by the Apex Court in its judgment in the case Kishen Pattnayak & Another vs. State of Orissa & Others (1989 Supp (1) SCC 258). The Writ petition, a copy of which may be seen at Annexure 1 sought a number of interim reliefs from the Court.

1.2 When the writ petition came before the Supreme Court on 28 April 1997, the learned Counsel for the petitioner observed that the National Human Rights Commission was seized of the matter of reported

[1] The reference being to what are popularly known as the 'KBK Districts' which now, in fact comprise the eight districts of Kalahandi, Nuapada, Bolangir, Sonepur, Koraput, Malkangiri, Nawarangpur and Rayagada.

deaths by starvation in these districts. He also referred to a report prepared by a team that had been sent by the Commission to Orissa in that connection. He added that the report contained several recommendations and suggestions which, if acted upon, could serve to provide the interim measures needed to prevent the situation deteriorating in the affected districts. In its Order of 28 April 1997, the Supreme Court consequently stated:

"It is, therefore, appropriate that we await the final report of the National Human Rights Commission for further action in the matter. The learned Advocate General stated that all directions given by the National Human Rights Commission, even when they are of an interim nature, would be promptly complied with by the State Government."

1.3 When the matter was listed again before the Supreme Court on 26 July 1997, the Hon'ble Court passed the following Order:

> "In view of the fact that the National Human Rights Commission is seized of the matter and is expected to give its report after an enquiry made at the spot, it would be appropriate to await the report.
>
> Learned Counsel for the petitioner submitted that some interim directions are required to be given in the meantime. If that be so, the petitioner is permitted to approach the National Human Rights Commission with its suggestion. So far as this Court is concerned, the matter would be considered even for this purpose on receiving the report of the National Human Rights Commission.
>
> We also consider it appropriate to require the Union of India to appear before the National Human Rights Commission to assist the Commission in such manner as the Commission may require for the purpose of completion of the task of the Commission. The learned Addl. Solicitor General undertakes to ensure prompt steps being taken for this purpose.

1.4 Pursuant to this order of the Supreme Court, the learned counsel for the Indian Council of Legal Aid and Advice filed a petition before the Commission on 1 September 1997, making a number of suggestions in regard to interim reliefs (Annexure II). Upon considering this petition, the Commission directed, on 3 September 1997, that notices be issued to all concerned and a letter be addressed to the Union Minister of Agriculture.

1.5 In the latter connection, it is pertinent here to observe that, on 3-4 December 1996, the National Human Rights Commission had considerd a letter from Shri Chaturanan Mishra, Union Minister of Agriculture, concerning a recent visit by him to Orissa. The letter stated that while he was in Bolangir, some of the local MLAs and representatives of political parties had complained to the Minister of "Starvation deaths during the present drought". The letter from the Minister enclosed a number of press reports alleging deaths by starvation, together with a list of some 26 cases, sent by the District Administration, which asserted that the reported deaths had not occurred as a result of starvation, but had resulted from other causes. The Minister requested the Commission to go into the details of the situation and to undertake an investigation so that an accurate picture could emerge.

1.6 In considering the communication received from the Minister, together with its enclosures, the Commission observed that while the report from the District Administration appended to the Minister's letter took the view that the reported deaths had resulted from illness or natural causes, the press articles suggested the contrary. The Commission accordingly decided that in the first instance a team of officers, comprising the Secretary General and the Director General (Investigation) of the Commission should proceed to the affected area to collect the facts of the situation. Notice was also issued to the Chief Secretary, Government of Orissa, to report within four weeks.

1.7 Shortly prior to the departure of the team, the Commission also received a joint memorandum signed by seven members of the State Legislative Assembly, in which they listed 14 cases of death occurring allegedly as a result of starvation. The memorandum urged the Commission to intervene and to investigate all allegations of such deaths by starvation reported from the affected areas of the State.

1.8 In pursuance of the directions of the Commission, the Secretary General and Director General (Investigation) left Delhi for Orissa on 11 December, 1996 and visited the districts of Nuapada, Kalahandi and Bolangir on 12 – 14 December; their supporting staff staying in the area until 17 December 1996 to gather further data. The team submitted its written report to the Commission on 2 January 1997, Annexure III. After considering the report carefully, the Commission sought the comments of the State Government on it and also those of the Union Minister for Agriculture. The comments of the State Government were sent to the Commission on 29 April 1997, under cover of a letter from the Principal Secretary, Revenue and Excise Department; the full text

of that response may be seen at Annexure IV. Comments on behalf of the Union Minister for Agriculture were received from the Additional Secretary of that Ministry together with his letter of 22 October 1997, Annexure V.

## II

2.1 The allegations of deaths by starvation and the seemingly recurrent nature of this tragic occurrence in the "KBK districts' raised issues that were both grave in implication and contentious in substance. After examining the report of its own team and the response of the State Government, and after reflecting on the petitions submitted by the Indian Council of Legal Aid and Advice and others, the Commission therefore considered it important to conduct in-depth hearings on this entire matter, with the full involvement of all parties concerned. In so deciding, the Commission had in mind the need to lift the consideration of this matter out of the adversarial and contentious cul-de-sac in which it might otherwise be trapped and to transform it, into a participative and constructive endeavour designed to develop a package of measures that could bring about perceptible improvement in the lives of the affected population in the 'KBK districts'. In pursuit of this objective, the Commission accordingly held 11 hearings between 3 September 1997 and 29 January 1998, examining all aspects of the matter – an examination that included inter alia, economic theories relating to starvation and famine, the economic, social and environmental history of Orissa – and of the 'KBK districts' in particular – over the past decades, the codes and criteria governing the conduct and reaction of State Governments and the Centre to situations such as those obtaining in the 'KBK districts' and, above all, the practical measures that could be taken in the interim, and be dovetailed into Long-Term plans, to end the scourge of deprivation, malnutrition and cyclical starvation in the districts concerned.

2.2 As the present petition before the Commission and the reliefs sought from the Supreme Court essentially request a series of interim measures, this Order of the Commission will concentrate primarily on such interim measures, leaving for subsequent consideration as may be needed, the views of the Commission on Long-Term issues.

2.3 This being said, the Commission would like to record, even in its present Order, its indebtedness to the pathbreaking and authoritative work of Professor Amartya Sen on the question of "Poverty and Famines" which has transformed the understating of all those who must come to grips, whether on a theoretical or practical plane, with these

grave problems. In particular, while considering the allegations of starvation in the 'KBK districts', the Commission had reason to recall Professor Sen's rigorous thesis, now known as the 'entitlement approach', to better appreciate the situation under review. In that 'approach', Professor Sen had focused on:

*".... The ability of people to command food through the legal means available in the society including the use of productive possibilities, trade opportunities, entitlements vis-à-vis the state and other methods of acquiring food',*[2]

and he had observed:

*"Ownership of food is one of the most primitive property rights and in each society there are rules governing this right. The entitlement approach concentrates on each person's entitlements to commodity bundles including food and views starvation as resulting from a failure to be entitled to a bundle with enough food."*[3]

2.4 In such a view, it is inadequate to explain starvation simply in terms of food availability decline, 'the FAD' approach, or even in terms of the shortage of income and purchasing power. While the latter may be considered a rudimentary way of trying to catch the essence of the 'entitlement approach', it offers only a partial explanation. Properly understood, according to the 'entitlement approach' a person's ability to command food depends on what he owns, what exchange possibilities are offered to a person, and what is taken away from him or her. The Commission has kept this reasoning in mind in formulating its ideas on this case and, indeed, in setting out the interim measures that, in this Order, it recommends should be implemented in the 'KBK districts'.

## III

3.1 The paragraphs that follow indicate the manner in which these interim measures have evolved and been decided upon, the scope of these measures and details concerning them. They also indicate the manner in which the interim measures should be implemented and the monitoring mechanisms that should be set in place in order to ensure the efficiency, integrity and accountability of the effort that must be made.

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[2] and [3] Professor Sen. Opus cited

3.2 The starting point in devising the interim measures was, of course, an analysis of the observations contained in the report of the Commission's team (to which references were made in the petition before the Supreme Court and before the Commission itself), and of the comments received on that report from the State government and the Union Ministry of Agriculture. While these documents may be seen in full as Annexures III, IV & V, it is necessary here to recall the principal points raised by the Commission's team and the comments thereon:

(i) The Commission's team asserted that, because of the very high level of deprivation existing in the area, along with extensive crop damage, malnourishment, inadequate income levels and insufficient outreach of relief measures, the possibility of deaths having occurred owing to prolonged malnutrition and hunger, compounded by diseases, could not be ruled out. Indeed, out of 21 deaths investigated by the team in the districts of Naupada, Kalahandi & Bolangir, 17 were attributable to such causes. The State Government differed on this matter, asserting that the report of the Commission's team did not "bring out clearly any case of death due to starvation." Instead the State Government stated that instructions had been given to all Collectors to form squads of officials to visit each district each week to enquire into the condition of those who may be ill or weak and to intervene urgently on their behalf.[4] It was added that the Government was supporting a number of supplementary nutrition programmes to ensure that those who were vulnerable for reasons of age or infirmity were fed for 24 days each month. The Union Ministry referred to the history of drought in western parts of Orissa and the special programmes implemented by the Government of India and the State Government to ameliorate the acute poverty in the area. It was stated that the Government of India had released Rs. 54 crores from the National Fund for Calamity Relief (NFCR) to help the State government, including Rs. 4 crore exclusively for the Emergency Feeding Programmes. This was in addition to the normal allocation of Rs. 36.76 crore during 1996-97 in the Calamity Relief Fund (CRF) of the State. Since the Government of India was not directly involved with the execution of relief measures, it was added that it would be difficult for it to comment on the reported deaths by starvation.

(ii) The Commission's team observed that the Old Age/ Widow/ Disability Schemes run by the State Government were not covering all

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[4] It is relevant here to note, however, that the State Government's report give its views on only 6 of the 21 cases investigated by the Commission's team.

the deserving cases. The State government responded that the number of beneficiaries covered by the schemes had been increased from 8,11,980 in November 1996 to 8.73,400 in February 1997 and that the Collectors concerned had been authorized to provide gratuitous relief cares to those who, in their judgment, were in need of emergency succour. The government of India observed that the State government had taken the necessary action to enhance the coverage of relevant schemes on the basis of the suggestions of the Commission's team.

(iii) The Commission's team had recommended that the State Government may wish to consider setting up an institutional mechanism at the grass-root level to oversee the relief measures and to add transparency to the administration's programmes. It also felt that there was need to evaluate the functioning of existing District Level Committees. Pending such action, the team observed that mobile squads should be formed, comprising officers of known integrity, to undertake surprise field visits in order to ensure the effective implementation of relief measures. The State Government commented that NGOs were already being associated regularly with the work of Disaster Management Committees and that, following panchayat elections, there was need to fully involve panchayati raj institutions in overseeing relief measures. For its part, the Government of India noted that the observations of the Commission's team came in the wake of complaints of non-availability of food grains, leakages in the public distribution system and the inadequacy of labour intensive schemes. The government of India therefore knew drew attention to the need to make institutional mechanisms work properly, such as the Disaster Management Committees at the State, district and village levels.

(iv) The Commission's team noted the inadequacy of water, both for drinking purposes and more generally; this had resulted in great hardship to the affected population, and even to a shortage of fodder for cattle – the latter circumstances leading to distress sales of livestock. The State government responded that Rs. 3.67 crore had been released from the Calamity Relief Fund/ National Calamity Relief Fund for augmenting drinking water in urban areas, 300 tube wells having been sunk against 328 programmes. In addition under the State Plan and ARWSP, it was stated that, in rural area, the Department concerned was to sink 8200 tube wells, 2000 public tube wells in place of defunct tube wells, and 2447 Anganwadi tube wells. It was added that, against these targets, 5703 tube wells and 346 surface wells had been sunk, and 1140 public tube wells and 616 Anganwadi tube wells had been replaced. It was further stated that the Lutheran World Service (India)

was sinking 500 tube wells in the 'KBK districts' and that Rs. 2 crore had been released for shallow ponds, surface wells, bunds etc., detailed instructions having been given to Collectors.

(v) A large number of vacant posts for medical staff, particularly in the rural areas of the 'KBK districts', was noted by the Commission's team, which suggested that there was need to redeploy staff and resources to the areas affected by drought. The State Government responded that it had made arrangements to post doctors to the area through adhoc appointments and changes in staff rules and that it had allocated Rs. 55 lakhs from the CRF to purchase and supply medicines to Primary Health centers. Further, revenue inspectors, village level workers and gram panchayat functionaries had been asked to visit the affected villages extensively and to report to the Collectors concerned. A sum of Rs. 4 crores had also been allocated from the NFCR for medicines in the drought affected areas. The Government of India took the view that steps had been set in motion to improve the health conditions, in accordance with the observations of the Commission's team.

(vi) The Commission's team observed that large scale migration was having a negative impact in terms of slowing down the asset building relief measures, and also adversely affecting the provision of relief measures. The State Government commented that migration by landless, marginal and small farmers was an annual event after the harvesting of the Kharif crop. It was added that such migration resulted from the "pull" of higher wages elsewhere and that the State Directorate of Labour intervened regularly to ensure the improvement of working conditions. The Government of India, while observing that some migration took place even in normal years from among those who sought better employment opportunities and wages, noted additionally that in drought situations there were abnormal rates of unemployment among agricultural workers. It stated that, to deal with such situations, adequate funds were made available under CRF, NFCR and a variety of wage/ employment programmes.

(vii) Finally, the Commission's team observed that the 'right level' of sensitivity and awareness were needed to report on conditions of distress in rural areas and to recommend effective relief measures. The team had heard allegations from the local population and elected representatives of the systematic neglect of backward areas and even of partisanship in the sanctioning of the relief. Such comments reflected a sense of anger and alienation among the people of the area. The state government responded that relief measures were 'post-event interven-

tion' and, at best, could be ameliorative in nature. Long-Term drought proofing measures were required in order to increase the area under assured irrigation. Further, there was need for the harvesting of surplus run-offs during the monsoon in order to provide supplementary irrigation, and also for crop substitution (oil seeds, pulses in place of paddy), and watershed treatment that would provide wage employment through the afforestation of the higher reaches, gully control in the middle reaches and a water-harvesting structure in the lower reaches. It was added that the State Government had prepared a Long-Term Action Plan (LTA) for the 'KBK districts', covering the period 1995-96 to 2001-02, and that this Action Plan, which had been approved by the Government of India, envisaged a larger flow of funds from the Centre than had hitherto been possible. The State Government indicated that it would welcome the Commission's intervention in securing this larger flow of funds for the Long- Term Action Plan. The Government of India, for its part, stated that a large number of poverty alleviation and wage employment programmes were in operation in Orissa, such as the Integrated Rural Development Programme (IRDP), the Development of Women and Children in Rural Areas (DWCRA), the Jawahar Rozgar Yojana (JRY), the Million Wells Scheme and the Employment Assurance Scheme, the National Old Age Pension Scheme, the National Family Benefit Scheme, the National Maternity Benefit Scheme, and the Rural Water Supply and Sanitation Programme. It added that the Long-Term Action Plan (LTAP) was also being implemented for the 'KBK districts'.

4. From the above it will be seen that while there was a large measure of agreement on the areas of work in which special efforts had to be made to end the cycle of deprivation and malnutrition in the 'KBK districts' – even if not on whether deaths had in fact occurred as a result of starvation – there was a clear need to set down, in a non-contentious and constructive manner, a practical programme of interim measures that would be clearly defined and agreed upon by all of the principal players, a programme that would be readily understood and transparent, and for the implementation of which accountability and regular monitoring would be the sine qua non. It would also appear from the above that, despite all of the existing efforts and plans, it remained uncertain as to whether the "bundle of commodities", including food, which Professor Sen considered essential to ensuring that deaths did not occur as a result of starvation, was indeed available to all of the people of the 'KBK districts', especially the most vulnerable.

5. In the 11 hearings that were therefore held by the Commission, following the submission of the petition to it by the Indian Council for

Legal Aid and Advice & Others, a practical programme of interim measures was evolved and agreed upon by all of the parties concerned, in a cooperative effort that involved the petitioners, the State Government and the Central Government, working together under the guidance and auspices of the Commission.

6. After due consideration, the Commission also arrived at the view that the interim measures should be undertaken over a period of two years, subject to such periodic reviews as it may consider appropriate and necessary, and that these interim measures should be as follows:

A. Monitoring Arrangements:

The key to effective implementation of programmes, however well-conceived, is their proper monitoring, which should enhance efficiency, transparency and accountability. The Commission believes that responsibility for such implementation and monitoring must, most appropriately and essentially, be that of the State Government, working through its normal lines of command and control, which must in turn draw fully upon the talents of the officers of the State, panchayati raj institutions and such leades of civil society, including non-governmental organizations, as are in a position to assist with sincerity and integrity. The Commission believes that it is for the State Government to establish the details of such a system of implementation and monitoring for the 'KBK districts', from the State-level, to that of the district-level and below. This being said, the Commission recommends that, at the State-level, a Monitoring Committee be established under the authority of the Chief Secretary, to guide and supervise the over-all effort. In addition, and without in any way wishing to transgress the normal lines of command and control, the Commission intends to appoint an eminent person to serve as its Special Rapporteur for the 'KBK districts', in order to keep itself fully informed of developments in respect of these districts and to interact, on its behalf, with all concerned authorities, whether at the State, district or other levels, as it may deem to be appropriate and necessary. The name of this Special Rapporteur, in regard to whom the parties have been consulted, wil be announced shortly. Costs in respect of the Special Rapporteur will be borne under arrangements to be made by the Commission, it being expected, however, that the State Government will render all possible practical help and cooperation to him in the discharge of his responsibilities.

B Specificity of Programmes:

(i) The Commission has been keen to ensure that the interim measures that are put into effect should be as clearly specified as possible in

terms of location, time frames and quantitative targets. Thus, while the interim measures will be in effect for a period of two years, subject to review, the Commission has after careful discussion with all concerned, - received from the State Government a specific set of commitments district-wise and programme-wise, for the period 1.12.1997 to 31.4.1998 in respect of each of the 8 districts belonging to the 'KBK' group, kindly see, in this connection the letter of 15 January 1998 from the Commissioner – cum – Secretary, Government of Orissa, to which are attached detailed tables of the targets for the 'KBK districts', for the five months 1.12.1997 to 31.4.1998, in respect of the programmes relating to Rural Drinking Water Supply, Social Security, Soil Conservation and Primary Health Care (Annexure VI. It has further been agreed in hearings before the Commission that the State Government will provide to the Commission an appraisal in respect of these programmes towards the end of March 1998 and that, by 31 March 1998, it will also submit to the Commission a similar, location specific and time-bound plan for the three succeeding months, namely, May, June and July 1998. This procedure will be repeated for each succeeding quarter: the appraisal of the preceding quarter and the plan for the succeeding three months being placed before the Commission a month before the latter commences. In making its assessments of the progress achieved and directions to be given, the Commission will draw upon the advice of its Special Rapporteur.

(ii) Certain comments follow in respect of individual programmes.

C. Emergency Feeding Programme:

This was being provided, as a nutritional supplement, to some 74,545 persons, on a once-a-day basis for 25 days a month. After reviewing the suggestions and views on this programme, the Commission is of the opinion that:

(i) The Emergency Feeding Programme, as devised, should continue on a once-a-day basis. However, the programme should be available each day of the month.

(ii) If any needy persons have been inadvertently omitted from the programme, they can be added to those being fed, on the advice of the concerned gram sabha/ gram panchayat, the competent State authorities or the Special Rapporteur of the Commission.

(iii) As the present contents of the feeding programme should, according to all reports, be improved upon both in terms of the types of

food offered and the calorific value of the food, the Commission recommends that the Monitoring Committee examine this matter carefully, drawing upon the best available advice of competent nutritionists and other experts in such matters, and make the necessary improvements.

(iv) The food is at present prepared by Anganwadi workers and this should continue. To the extent that additional personnel are needed to help, they should be drawn from the local population, so that employment is generated under the appropriate schemes e.g., the Jawahar Rozgar Yojana (JRY).

(v) The State Government has requested the Commission to give directions to the Central Government to release the funds due from the latter from the continuation of the Emergency Feeding Programme upto 30 April 1998. When considering a similar request on 22 October 1997, the Commission asked the learned counsel of the Union of India to impress upon the Government of India the Commission's view on the necessity of continuing the scheme until final recommendations were made. The Commission would now like to reiterate, as it did in its order of 22 October 1997, that the feeding scheme should continue and that the pattern of funding shall be as it was before September 1997. Further, as also stated on 22 October 1997, since the feeding centers are expected to continue until further orders, the Commission trusts that, for the purpose of running such centers, the state government will also continue to be able to secure rice at the rate applicable to supplies for persons living below the poverty line.

D. Old Age Pensions, Disability Pensions & Other Social Security measures:

(i) The Commission is of the view that all those who qualify for old age pensions, disability pensions and other social security measures under the existing criteria governing such schemes, should be included among the beneficiaries. It was agreed in the hearings that these criteria would not be sought to be modified for purposes of the present exercise. The State Government has, however, through its letter of 5 February 1998 addressed to the Commission by its learned Counsel, indicated that the number of those who would qualify for assistance under the existing criteria of the National Old Age Pension scheme, would be 47,959 persons more than the 56,579 beneficiaries so covered at present under that scheme for the 'KBK districts'. The Commission recommends that the proposal of the State government in regard to this additional number of beneficiaries, which has already been submitted by it

to the Central Government, should be acted upon expeditiously, in light of the Commission's observation made above.

(ii) As there have reportedly been delays in the monthly disbursement of pensions and such benefits, the Commission trusts that the monitoring system established by the State Government will ensure that such delays do not recur. The system of distributing identity cards to beneficiaries should also be expedited, as one means of off-setting such delays.

E. Employment Generation in Agriculture, Ecological Security, Soil Conservation, Irrigation and other schemes:

(i) Without, at this stage, going into questions relating to the implementation of the Long-Term Action for the 'KBK districts', the Commission has noted the specific undertakings contained in Annexure VI, not least in so far as they relate to employment generating activities. Here again, learning from the past experience, the Commission urges the tightening of monitoring systems along the lines set out earlier in this proceeding.

(ii) Further, in the light of the programmes being implemented, it appears to the Commission that the benefits of many of these could be maximized by linking them more consciously to employment generating projects. By way of illustration, the water-supply scheme (including the repair and maintenance of handpumps), the distribution of medicines in the Public Health Schemes, soil conservation and irrigation works, all lend themselves to such a purpose, as would afforestation programmes, which could be included in the effort, together with the revival of water-conservation installations of an earlier period which have fallen into disrepair.

(iii) Here again, the Commission has been informed of delays in regard to payments to those engaged in employment generating programmes. The Commission trusts that this too will be set right by the Monitoring Committee of the State Government, for it negates the whole purpose of the endeavour if delays in payment are allowed to compound the suffering of those who are dependant on such programmes.

F. Drinking Water:

The quantitative plans of the State Government are fully spelt out in their various submissions to the Commission. Further, the precise plans for the five months ending 30 April 1998 are contained in Annexure VI. The Commission sees no need therefore to comment on these plans any further at this stage, except to note that in the hearings before it, men-

tion has repeatedly been made to the need to maintain and keep in good repair the tube wells and handpumps that already exist but that are often in unusable condition. The Commission trusts that the Monitoring Committee will give this matter its attention as well, and will endeavour, not least through the training of local personnel and an improvement in logistical facilities, to remedy the situation.

G. Public Heatlh:

(i) Here too, the quantitative plans have been submitted to the Commission and require no specific comment at this stage. The Commission has taken note of these, and of the new regulations that the State Government is enforcing to ensure the posting of medical staff to rural areas. The Commission would like to observe, however, that it is deeply concerned at the deleterious, indeed devastating effects of malnutrition on young women and mothers, that is taking a cruel toll on them and that is leading, in addition, to an unacceptably high incidence of low-birth weight amongst the children being born, a deficiency that in turn prevents the full development of their human potential. The Commission strongly recommends that the Monitoring Committee take maximum steps to ensure that measures are taken in the 'KBK districts' to provide the iron and iodine supplements and the Vitamin A that is required by young women to prevent such needless harm from occurring.

(ii) Further, given the perilous nutritional condtions, prevailing in the 'KBK districts', the commission recommends that a health-cum-nutritional survey be undertaken for these districts by an independent agency, such as the Nutrition Foundation of India.

H. Land Reform:

(i) The matter of land reform falls within the context of long-term measures needed for the 'KBK districts' and, at this stage, the Commission is not entering into the details of those measures or of the implementation of the Long – Term Action Plan.

(ii) It has, however, been pointed out to the Commission in the hearings that the issue of land reforms is inextricably linked to the future well-being, or deceline, of these districts. It has accordingly been urged that the State Government should, even at this stage, be requested to constitute a Committee to examine all aspects of the land reform question in the 'KBK districts'. The Commission sees value in this suggestion and urges the State Government to constitute such a Committee with the request that it give its report, within a fixed time frame,

on the measures that should be taken in these districts to remedy the present situation that is marked by a lack of land reforms, the alienation of land, migration and numerous other concomitant ills.

I. Other Observations:

(i) The State Government has expressed its concern that, with the elections to the Lok Sabha having been announced and now underway, the implementation of these interim measures should not be affected by the restrictions imposed by the Model Code of Conduct. This Commission would like to make clear that the measures envisaged have been evolved, and their implementation commenced, well prior to the announcement of the elections. Accordingly, it expects that the implementation of these measures will proceed unhindered by any such restrictions.

(ii) It remains of course open to the petitioner, and to the other parties, to approach the Commission on any additional matters which they may wish to bring to the attention of the Commission for further directives.

7. Finally, the Commission wishes to place on record its deep appreciation of the most able and constructive cooperation that it has received through its consideration of this matter from the learned counsels appearing before it: Shri Sanjay Parikh for the petitioner, Shri Jayant Das and Shri Raj Kumar Mehta for the State Government of Orissa, and Shri Ajay Kumar Vali and Shri Avtar Singh Rawat for the Union of India. The Commission is also indebted to Dr. Amrita Rangasami, Director, Centre for the Study of Administration of Relief for her most thoughtful presentations and submissions. At every stage of the proceedings, the Commission has also received the fullest cooperation of the senior officers of the State and Central Governments, whose presence it has requested. Their collaborative effort has enabled the Commission to set out the interim measures recounted above through a process that has been notably non-adversarial and cooperative in its approach and outcome. As indicated earlier, the Commission will revert to the longer-term issues raised in respect of the 'KBK districts' separately and at a later stage.

8. A copy of these proceedings may be forwarded to the Registrar of the Supreme Court of India for being placed in the records of the file of the Writ Petition (Civil) No. 42/97 pursuant to orders therein dated 28 April 1997 and 26 July 1997. The Commission directs that these recommendations be implemented by the State of Orissa and the Union

of India forthwith. The Commission would further clarify that the recommendations made by it pursuant to the orders of the Hon'ble Supreme Court of India would be subject to such other or further directions as the Hon'ble Supreme Court may be pleased to issue in the matter.

(Justice M.N. Venkatachaliah)
Chairperson

(Shri Virendra Dayal)
Member

(Justice V.S. Malimath)
Member

# ARTICLES

# THE REPUBLIC OF HUNGER

— UTSA PATNAIK

*Public Lecture on the occasion of the 50th Birthday of Safdar Hashmi, organized by SAHMAT (Safdar Hashmi Memorial Trust) on April 10, 2004, New Delhi*

**Introduction**

In the course of the last five years (1998 to 2003), the population of the Republic of India has been sliding down towards sharply lowered levels of per capita foodgrains absorption, levels so low in particular years that they have not been seen for the last half century. Between the early 1990s when economic reforms began, and at present, taking three-year averages, the annual absorption of foodgrains per head has come down from 177 kg. to 155 kg. Such low absorption levels were last seen in the initial years of World War 11 – from where they had fallen further still. Again, after some recovery, the very first few years after Independence half a century ago and the food crisis of the mid-1960s, are comparable to present average absorption levels.

Over four-fifths of the total fall, has taken place in the last five years alone, from 174 kg. in the three years ending in 1998 to 155 kg. taking the average of the two pre-drought years. This steep and unprecedented fall in foodgrains absorption in the last five years has entailed a sharp increase in the numbers of people in hunger, particularly in rural areas, and for very many it has meant starvation. The average downward movement in turn is the outcome of divergent trends – foodgrains absorption is rising fast for the (mainly urban) well-to-do, and is either the same or falling faster than the average for the bulk of the (mainly rural) population.

This phenomenon of increasing numbers in hunger, can be established both on the basis of the hardest and most reliable data (on output, trade and stocks) that we have from official data sources, as well as from the ground-level experience of individual researchers and of organizations working in rural areas. The phenomenon is completely independent of the recent drought, and indeed the lowest levels of foodgrains absorption to date, has been registered two years before the severe drought of 2002-03.

The perception of the government and of the majority of academics, is however very different from that expressed above: they interpret the

development as nothing out of the ordinary and many indeed even see it as a positive development, indicating a voluntarily chosen, more diversified basket of consumption by all segments of the population including the poor. When as a ground reality, the incidence of hunger rises, a 'denial mode' amongst those who govern and also amongst those who are associated with making or influencing policy during the period concerned, is common and is to be expected. But in the present case the divergence between the reality of increasing hunger, and the prevalent bland justifications of the phenomenon as a positive one, is so stark and so striking, that this divergence itself perhaps requires a theoretical explanation. Never before in the independent history of our country have we seen the kind of wholesale denial of a negative trend, and of its packaging and presentation as a positive development, as we are seeing at present. Moreover, the packaging and the justifications are not being put forward only by the right -wing political class which through its policy measures, is responsible for the present debacle. That the present government and ruling class in this country should seek to sanitize and justify the deeply anti-humanist and negative trend of increasing hunger, is to be expected. What is disturbing is that a large number of hitherto liberal academics are also advancing these justifications on the basis of various theories which are, needless to say, quite fallacious.

**The International context of the discussion**

Before going on to the details of the story in India, let us situate this story within the broader context of the past international approaches to hunger and famine. For this I will take up two cases – the alleged massive famine in China during the Great Leap, 1958-61, and the internationally unrecognized famine in Russia in the first half of the 1990s. When we look at these cases it becomes clear enough that the entire field of the discussion of hunger and famine is a highly ideological one, and has been routinely characterized by the abandoning of the minimum academic criteria with respect to evidence and estimation.

First, let us consider the allegation that 27 to 30 million people died in China during the 'Great Leap' period. This allegation is contained in the books of two US demographers Ansley J Coale (1984), and Judith Banister (1987). Few in the developing world however would have bothered to read the discussion of these demographers, couched in technical language. The main popularizer and ardently uncritical supporter of the conclusions of these US demographers, has been Amartya K.Sen and it is through Sen's writings first in the *New York Review of Books* and subsequently in his many lectures and books including *Development as Freedom* (1999) that the world, and the reading public in this

country has been informed that "China has had what is almost certainly the largest recorded famine in history (when thirty million people died in the famine that followed the Great Leap Forward) in 1958-61) whereas India has not had a famine since independence in 1947 " (Sen, 1999, 43). The figure of 30 million has passed into popular folklore. However, a study of how it has been arrived at, shows that this estimate has no scholarly basis whatsoever.

The facts are that there was a run of three bad harvests and a steep 30% drop in foodgrains output took place in China in 1960, while the government's procurement from the villages did not decline, lowering availability per head. The official death rate, which had been falling up to 1958 owing to public health and sanitation measures, registered a rise to 25.4 per thousand in 1960. (This peak 'famine' death rate in China was however little different from India's actual, 'normal' death rate, 24.6, in the same year). The birth rate also fell steeply in 1958, mainly owing to labour mobilisation for collective work.

Two alternative routes have been used to estimate 'famine deaths', both of very dubious validity. In the first, the 'missing millions' totalling 27 millions in the population pyramid during 1958 to 1961, have been identified with 'famine deaths'. The problem with this is that not only the people who were actually living and who died in excess of normal numbers are included in the missing millions, but so are all those hypothetical persons included, who were never born at all and who 'should' have been born if the birth rate had not fallen. This is not a commonsense definition nor is it a logical definition of famine deaths: for, to 'die' in a famine, a minimum necessary condition is to be born in the first place. The Chinese are a highly talented people but even they cannot achieve the feat of dying without being born. If a person is told that 30 million people died, then quite correctly she would infer that those 30 million were alive and then died. The fact that 19 million of them never existed because they were never born in the first place, is not conveyed by the formulation. Hence, there is disingenuousness involved in saying that 30 million people 'died': it is an untrue proposition.

The second route, followed by the demographers Coale and Banister, is perhaps even more dubious. They take the population totals yielded by the official 1953 and 1964 Censuses in China to be correct, but dispute the official fertility rate even though it was based on a very large sample of 30 million persons or 5% of the then population, especially canvassed along with the 1953 Census as Nai- Ruenn Chen (1966) had informed us. Instead, they use the much later, Census 1982 study to

project back very high fertility rates to the past, thus constructing an entirely hypothetical larger total of births between 1953 and 1964.

If more people were born over the inter-censal period 1953 to 1964, correspondingly these extra people must also have died over the same period: for both authors despite rejecting every official vital rate, display a touching faith in the absolute Census population totals at these two dates. Hence the official increase in population is kept unchanged, enabling them to assume exactly as many extra deaths as they assume extra births. With this procedure the official figure of total deaths over the inter-censal period, was raised by a heroic 60 percent. Both authors then arbitrarily allocated the assumed higher numbers of deaths over the individual inter-censal years, by assuming varying rates by which deaths were allegedly 'under-reported' during each of these years. In short it was entirely up to the demographer how many extra deaths he or she assigned to the Great Leap years, and the totally arbitrary nature of the procedure can be gauged by the fact that Coale raised the 1960 death rate to nearly 39 while Banister raised it to 44.6 (compared to the official death rate of 25.4). There is no reasonable basis for either figure.

Nor is this all: a linear time trend was then fitted by both, to deaths derived from a variable – the death rate – which always behaves non-linearly, and the extent to which the (arbitrarily constructed) death rate was above this declining trend, was then used to derive total 'excess deaths', the figure being 27 million for Coale and 30 million for Banister. We know that deaths in a population can never reach zero, so fitting linear trends makes no sense. The linear trend procedure implies that the Chinese population would have reached zero deaths and attained immortality in a few years – a remarkable achievement indeed, an impossible achievement outside the nonsensical statistical procedures followed by the US demographers.

It is a travesty of the norms of academic integrity, that grossly exaggerated estimates of 'famine' deaths derived in this arbitrary manner have been uncritically quoted and promoted and that they enjoy so much currency. In my detailed critique (Patnaik 2002) I have also shown the inconsistency of the peak death rates constructed by Coale and Banister, with the foodgrains output and availability figures in China. My calculations also show that the lowest possible availability figures we can get for China after taking into account government procurement, is still higher than in India, and it is a puzzle why, given a much more egalitarian distribution, the death rate should have risen even to the officially declared level. Because the internal political developments in China af-

ter 1978 were in the direction of attacking Maoist egalitarianism and the commune system, no repudiation from Chinese sources of the US estimates are to be seen.

In sharp contrast to the retrospective, patently ideological construction of hypothetical large famine deaths in China's Great Leap period and the publicizing of these figures, we find that the demographic collapse in Russia in the first half of the 1990s has been met with a deafening silence from the same academics. The estimation methods which they applied to China, are not applied by them to Russia. The facts are that so-called 'shock therapy' to usher in capitalism, under the advice of Western experts, led to a catastrophic collapse of GDP in the former socialist states between 1990 and 1996. As Table 1 summarizing United Nations data shows, the GDP level was half or less in Russia and Ukraine by 1996 compared to a decade earlier and collapsed to only one-fifth of the mid-eighties level in Georgia, which was the worst affected. Never in peacetime have we ever seen such a comprehensive destruction of productive capacities and outputs, entirely owing to the wrong macro-economic policies advised by foreign experts and followed by the local policy makers. The human effects have been devastating, with a sharp reversal of the decades of improvement in all human development indicators. The death rate among the able-bodied rose from nearly 49 to 58 (per thousand) comparing 1992 with 1990, and rose further to 84 per thousand by 1994. The male expectation of life declined by nearly 6 years in Russia. With the steep rise in the death rate, the total population of Russia showed absolute decline – again, an unprecedented situation in peacetime.

Where were those academics who profess to be concerned with hunger and famine, when it came to analyzing the economic and demographic collapse in Russia? It can hardly be argued that journalists and the media had no access to the country after 1990. I have said earlier that it is not reasonable to count the effects of the decline in the birth rate if any, to estimate 'famine deaths'. If we apply a reasonable method of simply taking the 1990 death rate in Russia as the bench mark and calculate the cumulated extra deaths among the able-bodied by 1996 owing to the observed rise in the death rate, we get a figure of more than 4 million excess deaths in Russia alone. Expressed in relation to Russia's population, this famine was three times larger than the great Bengal famine in

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[1] These death rates were presented in a paper on poverty in Russia, by Prof. P. Gregory, at an international workshop on country studies in poverty held at UNDP, New York on September 20, 1997 and attended by the author.

India in 1943-44 and twice as large as the Chinese excess mortality – accepting the official figures – during the Great Leap years. The Russian famine is neither internationally recognized or publicized, for the very good reason that Russia was making a transition to capitalism and it is this process which gave rise to the famine. Those who are eager to try to discredit socialism even at the cost of indefensible statistical procedures, appear to be less than willing to recognize the existence of famine or estimate famine deaths in a 'transitional' society like Russia even though the case is a contemporary one and is well documented.

**Table 1:**
**Drop in real GDP and male life expectancy in the countries of the former Soviet Union, 1985-1995**

| Country | Real GDP in 1995, percentage below real GDP level in 1985 | Change in male life expectancy, no. of years |
|---|---|---|
| Armenia | –62 | –1.1 |
| Belarus | –39 | –2.9 |
| Georgia | –82 | – |
| Kazakhstan | –55 | – |
| Kyrgyzstan | –50 | –3.2 |
| Russian Federation | –45 | –5.9 |
| Tajikstan | –60 | –1.0 |
| Turkmenistan | –40 | –0.2 |
| Ukraine | –54 | –2.4 |
| Uzbekistan | –17 | –0.0 |

*Source: UNDP Poverty Report 1998 New York 1998; and UNDP Poverty Report New York 2000.*

**The Significance of the decline in India's Food Absorption in the light of Historical Trends**

We have not yet reached in India, the nadir of average foodgrains absorption seen in Sub-Shahran Africa under economic reforms and trade liberalization, where from 158 kg. per head in 1980 there has been a decline to below 136 kg. by the mid-1990s, and the masses are perpetually on the verge of being pushed over into famine whenever there is drought. The six most populous countries of Sub-Saharan Africa, accounting for 60% of the entire region's population, have seen declining calorie intake per diem, because declining food aid is not compensating for lowered domestic food production.

A large segment of the rural masses in India with a much lower foodgrains absorption than the average, have been already reduced to the nutritional status of Sub-Saharan Africa, On the basis of the NSS data on calorie intake for 1999-2000, I estimate that about 40 % of the rural population was at the low absorption level of the SSA average. It is not for any lack of effort by the Indian Government that the situation is not worse. If the present incorrect policies of official denial of the widening ambit of hunger, failure to undertake expansionary development policies, and the official promotion of export oriented corporate agriculture continue to be followed, it may well be only a matter of another five years or so before we see the descent of the whole of rural India to the present average SSA nutritional status.

It is hardly possible to imagine amore drastic reversal of the goal of food security than has been seen in the last five years. The fifty years of a dying colonial rule before Independence had seen a decline of annual foodgrains availability per head by a quarter, from 199 kg. to 148.5 kg., considering five-year averages and leaving aside the individual post-war year which was even lower (see Table 2). The War years included the terrible Bengal famine with a mortality of at least 3 million. I have elsewhere argued (Patnaik 1999) that although the proximate cause of the famine was the inflationary burden of financing the war which was unjustly placed on India, the actual toll in the Bengal famine would not have been so large, without the preceding three decades of declining nutrition in Bengal which had seen a much larger than average drop in per capita foodgrains availability, by nearly 40% between 1911 and 1947.

Many who had seen the Bengal famine before their eyes, and in particular P.Mahalanobis, had an important role in formulating post-Independence policy: the goal of attaining food security at least in the limited sense of foodgrains self-sufficiency was given priority, and we saw a rise, albeit a painfully slow one, in the foodgrains availability per head from 152 kg. during 1950-55 to 177 kg by 1989-91 (see Tables 3 and 4). While the new agricultural strategy and green revolution no doubt had many drawbacks as regards equity of distribution, the average rise in per head output and availability was a major achievement which should not be under-rated.

Forty years of effort have been lost in the last decade of neo-liberal economic reforms, with over four-fifths of the loss taking place in the last five years alone. The most remarkable and disastrous feature of the last five years of NDA rule in India, has been the slide-back to the low level of 151 kg. per head food absorption in rural areas by 2001, a level

not seen for fifty years. Reports of starvation, farmer suicides and deepening hunger, should cause little surprise when we consider the recent trends in the official data on foodgrains output and availability. If we exclude the abnormal drought year 2002-03 and consider the average output of the preceding two years, we find that net foodgrains output per capita has fallen by about 5.5 kg. compared to the early nineties, owing to a slowing of output growth. This fall in per head output had been anticipated by this author (Patnaik 1996): as agriculture was opened up to the pull of global demand, 8 million hectares of foodgrains growing land has been diverted to exportable crops between 1991 and 2001, and yield has not risen enough to compensate, leading to a sharp decline of annual output growth which has fallen below population growth (even though the latter itself has been falling): hence we see fall in per head output.

Even more striking than output decline, however, has been the decline in foodgrains availability, or absorption per capita over the same period. Availability (which is defined as net output plus net imports and minus net additions to public stocks) has fallen by four times as much as output, or by 22 kg., as Table 4 shows. A large gap between per capita output and availability was last seen during the food crisis of the mid-1960s, but in the opposite direction – at that time, since output fell, 19 million tonnes of foodgrains were imported over two years to ensure enough domestic availability, apart from existing stocks being drawn down for the same purpose. By contrast in recent years even though output per head has fallen, both very large additions to stocks as well as massive food exports have taken place, resulting in large availability decline.

*Availability* is the same as the actual *absorption* of foodgrains, and the two terms will be used interchangeably. There was a slow decline in the absorption of food grains per head of the country's population between 1991-2 and 1997-8, after which it has fallen very sharply, from an average annual level of 174.3 kg. in the three year period ending in 1997-98, to only 151 kg. by the individual pre-drought year 2000-01, an abysmally low level last seen during the early years of the Second World War, which included the years of the terrible Bengal famine. Thus, in 2000-01 *the average Indian family of four members was absorbing 93 kg. less of foodgrains compared to a mere four years earlier – a massive and unprecedented drop, entailing a fall in average daily intake by 64 gms. per head, or a fall in calorie intake by at least 225 calories from foodgrains* which accounts for 65 to 70 percent of the food budget of the poor. Adequate energy intake from cereals normally ensures ad-

equate protein intake and the converse is also true, as NNMB Reports point out.[2] Since the richest one-sixth to one-fifth of the population, mainly urban, has been improving and diversifying diets, the nutritional decline for the poorer three-fifths of the population, mainly rural, has been much greater than the average fall indicates.

Last year's severe drought, despite very low output, galvanized efforts to implement food-for-work in the drought-hit areas, and therefore resulted in somewhat improved availability per head compared to 2000-01, though it remained lower than the 158 kg.level of the previous year, 2001-02 which had registered the highest foodgrains output ever seen of 212 million tonnes. Nevertheless the average annual cereals absorption taking all three years ending in 2002-03 is only 146 kg., and the cereals plus pulses, or foodgrains absorption is only 155 kg. per head, an absolutely inadequate level given the large inequality in its distribution.

Often the argument is heard that since per capita income is rising it is to be expected that people should consume less cereals and pulses which become inferior goods, and consume more high-value foods: in short, people would diversify their diets. A falling share of grains in the consumer budget as income rises, is known as Engel's Law. So, it is argued, there is nothing wrong if we see falling availability/absorption of foodgrains per head. This is a total misconception regarding Engel's Law and it seems to have contributed to the incorrect official explanations of large stocks as arising from 'overproduction', discussed a little later. It is a misconception because Engel was referring to the fall in the share of food expenditure for the *direct* consumption of grains as income rises, and not to the total absorption of grains which includes both direct use as well as indirect use as feed for livestock ( to produce milk, eggs, meat and so on), and as industrial raw material. The absorption of foodgrains per capita is always found to rise, not fall, as the consumer's average income rises. The figures of availability we have given, as indeed the official figures of availability, refer to absorption of

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[1] The National Nutrition Monitoring Bureau, in *25 Years of NNMB* (Delhi, 1997) says on p.3: "The NNMB has consistently confirmed in successive surveys that the primary bottleneck in the dietaries of even the poorest segments of Indians is energy and not protein as was hitherto believed.....The data also indicate that measurement of consumption of cereals can be used as a proxy for total energy intake. This observation is of considerable significance as it helps to determine rapid, though approximate, estimates of energy intakes at the HH (household) level."

grain *for all purposes*. (Note that availability figures do not require any consumption data but are calculated directly from output data, which is the hardest data we have, and this is adjusted only for trade and for stocks, so by definition it has to meet all possible final uses).

Availability of foodgrains thus includes not only direct consumption (as *roti*, boiled rice and so on) but also the part converted to animal products by being used as commercial feedgrains, and at present a part of these animal products are exported. (The conversion coefficients are quite high, for example a kilo of mutton can require 3-4 kilos of feedgrain to produce). Availability also includes the part of grain converted to industrial products like starch and alcohol, and into processed foods like cornflakes and noodles with an urban market. The availability, or absorption of foodgrains per head, *because it is for all uses, always rises as a nation's per capita income rises*. This is a very well known fact and is supported by an extensive literature on the responsiveness of demand for cereals to rising incomes, and by the FAO food balance sheets which give data over time for output, trade and stocks by individual crops, and cover virtually every country.

China, with about double India's per capita income, absorbed 325 kg. per capita of foodgrains (excluding tubers) in the mid-1990s compared to India's less than 200 kg. at that time. Mexico absorbed 375 kg.per capita, high income Europe absorbed over 650 kg. per capita and USA absorbed the maximum, 850 kg. per capita of which less than a quarter was directly consumed and the rest converted to animal products, processed or put to industrial use (Calculated by author from FAO, Food Balance Sheets for 1992-94).

The recent trend in this country of sharply declining foodgrains absorption per head while average per capita income has been rising, is thus highly abnormal, not only in the light of international experience but also in comparison with our own past experience – we have always seen rising grain absorption per capita as average incomes rose in the past in India. Between 1950 and 1991 per capita absorption rose slowly from 152 kg. to 177 kg.as per capita incomes rose.

As earlier observed these gains of four decades have been wiped out in a single decade of economic reform, and while availability fell by 3 kg per head in the seven years up to 1998, over eight-tenths of the total fall, namely a fall of 19 kg., has taken place in the mere five years of NDA rule (from 174 kg. average for the three years ending in 1998 to 155 kg. average for the three years ending in 2002-03).

**Table 2**
**British India, 1897 to 1946: Net Output, Imports & Availability of Foodgrains (Five-year average except last year)**

| Period | Net FG Output m. ton | Net FG Imports m.ton | Net FG Avail. m.ton | Popu-lation m | *Per* Output Kg. | *Capita* Availability Kg. |
|---|---|---|---|---|---|---|
| 1897-1902 | 44196.84 | -475.00 | 43721.84 | 219.74 | 201.1 | 199.0 |
| 1903-1908 | 41135.94 | -1105.83 | 40030.11 | 225.79 | 182.2 | 177.3 |
| 1909-1914 | 47292.59 | -1662.83 | 45629.76 | 231.30 | 204.5 | 197.3 |
| 1915-1920 | 45298.31 | -336.00 | 44962.31 | 232.81 | 194.6 | 193.1 |
| 1921-1926 | 44607.21 | -203.67 | 44403.54 | 239.18 | 186.5 | 185.6 |
| 1927-1932 | 43338.46 | 858.83 | 44197.29 | 253.26 | 171.1 | 174.5 |
| 1933-1938 | 41786.79 | 1374.67 | 43161.46 | 270.98 | 154.2 | 159.3 |
| 1939-1944 | 42702.91 | 521.83 | 43224.74 | 291.03 | 146.7 | 148.5 |
| Individual year | | | | | | |
| 1945-46 | 41397.13 | 596.00 | 41993.13 | 307.00 | 134.8 | 136.8 |

*Source: Net Output is obtained from gross output data in G. Blyn (1966) Agricultural Trends in India 1891-1949, by following the present day practice, of deducting one-eighth from Gross output on account of seed, feed and wastage. Net import figures also from the same source. Last two columns are roughly comparable with present day concepts of per head output and availability detailed in Table 3 and 4 below.*

**Table 3**
**Annual per capita output, imports and availability of foodgrains 1950-1 to 1989-90 in Kgs (Five-year average)**

| Period | Net Cereals Output | Net Import | Change in Stocks | Net Annual Availability of Food Grains per Capita, Cereals | Pulses | Total | Pulses/ *Total,%* |
|---|---|---|---|---|---|---|---|
| 1951-55 | 122.74 | 6.06 | - 0.33 | 129.13 | 23.59 | 152.72 | 15.4 |
| 1956-60 | 121.81 | 8.30 | - 5.82 | 135.93 | 24.84 | 160.77 | 15.5 |
| 1961-65 | 135.02 | 10.99 | - 0.31 | 146.32 | 22.12 | 168.44 | 13.1 |
| 1966-70 | 129.83 | 12.45 | 1.34 | 140.94 | 17.78 | 158.72 | 11.2 |
| 1971-75 | 135.48 | 6.17 | 1.11 | 140.54 | 15.47 | 156.01 | 9.9 |
| 1976-80 | 147.13 | - 0.77 | 0.57 | 145.79 | 15.63 | 161.42 | 9.7 |
| 1981-85 | 153.19 | 2.30 | 3.54 | 151.95 | 14.34 | 166.29 | 8.6 |
| 1986-90 | 155.95 | 0.65 | - 1.56 | 158.16 | 14.61 | 172.77 | 8.5 |
| Change in per Capita Availability, percent | | | | | | | |
| 1951-55 to 1971-75 | | | | 2.15 | | | |
| 1971-75 to 1986-90 | | | | 10.74 | | | |
| Total Change, 1951-55 to 1986-90 | | | | 13.12 | | | |

*Source: Calculated from net output and availability data in Ministry of Finance, Economic Survey for various years, supplemented by Reserve Bank of India, Report on Currency and Finance for various years.*

## Table 4
## Summary of Annual per capita Foodgrains Output and Availability in India in the Nineties (Three Year Average)

| Three-yr. Period Ending in | Average Popula-tion million | Net Output per Head *Cereals* Kg. | *Food-grains* | Net *Cereals* Kg. | Availab-ility *Pulses* Kg. | per Head *Foodgrains* Kg./ Year | Gms / day |
|---|---|---|---|---|---|---|---|
| 1991-92 | 850.70 | 163.43 | 178.77 | 162.8 | 14.2 | 177.0 | 485 |
| 1994-95 | 901.02 | 166.74 | 181.59 | 160.8 | 13.5 | 174.3 | 478 |
| 1997-98 | 953.07 | 162.98 | 176.81 | 161.6 | 12.6 | 174.2 | 477 |
| 2000-01 | 1008.14 | 164.84 | 177.71 | 151.7 | 11.5 | 163.2 | 447 |
| *Individual Year* | | | | | | | |
| *2000-01* | *1027.03* | *157.79* | *167.43* | *141.42* | *9.64* | *151.06* | *414* |
| *2001-02* | *1046.44* | *165.40* | *177.01* | *146.76* | *11.61* | *158.37* | *434* |
| *2002-03** | *1066.22* | *140.54* | *150.09* | *148.14* | *9.55* | *157.69* | *427* |
| Average of the Years 2000-01/ 2001-02 | 1036.74 | 161.63 | 173.30 | 144.51 | 10.64 | 155.15 | 425 |
| *Change in Per Capita Availability of Foodgrains, %* | | | | | | | |
| *Triennium ending 1991-92 to Triennium ending 1997-98* | | | | | | *- 1.6* | |
| *Triennium ending 1997-98 to biennium ending 2001-02* | | | | | | *- 10.9* | |
| *Total Change, 1991-92 to 2001-02.* | | | | | | *-12.3* | |

*Source: As Table 3. Population growth rate calculated as 1.89% using Census population totals of 1991 and 2001. The population figure for 2001 used above, is the March 2001 Census total of 1027million which is 6 million less than the mid-2001 figure of 1033.3 million used in the Economic Survey, 2002-03 in its Table S-21. Population for 2002 and 2003 in the table above, is obtained by applying the growth rate of 1.89% to this March 2001Census figure. The underestimation of population by us is deliberate. The reader can check that actual availability per head would be lower by about 1 kg. in each year from 2001 using the official population figures.*

** Note that 2002-03 estimate of availability is provisional, based on assuming the correctness of the data on individual items like procurement, off-take, and export over the months of 2002-03 as reported in RBI, Report on Currency and Finance 2002-03, Table 2.13 on p.12. It may be noted that the opening and closing stocks figures given in the same table are not consistent with the reported change in individual items - about 13 million tonnes of foodgrains are not accounted for.*

What lies behind the decline in absorption of foodgrains? The massive decline at present compared to 1998, is the result of *an unprecedented decline in purchasing power in rural areas following directly from a number of deflationary policies at the macroeconomic level, combined with international price declines for the larger volumes of export crops produced in India following trade liberalization. Both deflationary policies and opening up to trade are integral to neo-liberal economic reforms.* This has resulted in a deflation of effective demand as far as the mass of the rural population is concerned.

The continuous decline in purchasing power, hence decline in foodgrains absorption for direct consumption purposes, resulted in a continuous decline in foodgrains sales from the PDS, which therefore got reflected in the continuous and increasing additions to public food stocks year after year starting from 1998, with the total stocks standing at 63.1 million tonnes by the end of July 2002. This was nearly 40 million tonnes in excess of buffer norms – and this in spite of declining per capita foodgrains output, and 2 to 4 million tonnes of grain exports every year up to June 2002, after which exports undertaken by the government have surged to unprecedented levels.

Last year, the worst drought year for two decades, between June 2002 and June 2003, the NDA government exported a record 12 million tonnes of foodgrains out of stocks and continued to export a million tonnes a month, bringing the declared total exports to over 17 million tonnes by November 2003. Independent India has never before seen such huge exports, only made possible by more and more empty stomachs over the . preceding years. It is an utter scandal and a disgrace, that at the same time that more millions of the rural poor were going hungry and those already hungry were being pushed into starvation, rather than undertake widespread food-for-work programmes the government preferred to feed foreigners and their cattle by exporting foodgrains, applying a heavy subsidy to beat low world price. The f.o.b. export price was lower than the domestic BPL price. The concerned Ministry has had the gall to put full-page advertisements in newspapers in March as part of the government's pre-election 'shining India' campaign, celebrating among other things its export earnings.

Now that the perception of drought has ended, food-for -work projects have been wound up, and the media are full of a good monsoon and record projected grain output in 2003-04, the prognosis for a recovery of absorption levels to anywhere near that of 1998, remain very bleak. Let us remember that millions more than before were going hungry at

only 158 kg. average absorption level in the year of the largest harvest seen to date - 212 million tonnes in 2001-02, or 177 kg average output. The difference of nearly 20 kg. per head, between output and absorption, was going into addition to stocks, held at increasing cost, and into exports.

While a look at Table 3 shows that the difficult late 1960s and early 1970s also had fairly low availability, only somewhat higher than at present, it has to be recognized that the situation for the rural poor is worse today compared to then, because a larger part of the lowered absorption of today is going into animal products (the consumption of which is highly concentrated with the well-to-do) and into open market sales to processing units. Thus while in the last drought year 2002-03, a total of 33 million tonnes of grain were procured, the sales through the PDS plus allocations to special schemes for weaker sections amounted to almost the same, 35 million tonnes, implying that the mountainous stocks of 63 million tonnes, were drawn down by a negligible 2 million tonne only, on this account.

Thus no policies were followed of an expansionary nature to reduce stocks by implementing large-scale food-for -work schemes in all rural areas in order to generate employment and restore purchasing power to earlier levels, as had been widely suggested by the progressive movements. All that was done was to allocate larger amounts of foodgrains to relief works in drought-hit areas alone. It is the massive 12 million tonnes of exports plus 6 million tonnes of open market sales which mainly reduced stocks by July 2003, and these obviously did not benefit the poor. The very fact of as high as 33 million tonnes procurement in a severe drought year also indicates distress sales by farmers (see RBI, *Report on Currency and Finance 2002-03* for these figures)[3].

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[3] We are assuming here that the individual items given month-by-month in Table2.13 on p.12 of the RBI, *Report on Currency and Finance 2002-03* up to November 2003, are correct. These individual items include procurement, off-take ( given separately on account of PDS sales, allocations to schemes for weaker sections and open- market sales and exports). The doubt arises because the opening stocks and closing stocks figures given in the Table are not consistent with the total of the individual items for ,closing are found to be understated in many months. The final closing stock of October 2003 is given as 22.1 million tonnes, but it should be 35 million tonnes if we calculate from the individual items. Thus 13 million tonnes of foodgrains are unaccounted for! Did it rot, or was it destroyed: is the question.

Neither government nor its policy makers are prepared to recognize the fact that falling availability reflects a contraction of effective demand. On the contrary, the explanation put forward in official publications of the Finance Ministry and the RBI and propagated by most academic economists, is precisely the opposite, namely that there is 'overproduction'. The *Economic Survey 2001-02* (pp.118-130) argued that excess stocks were a surplus over what people voluntarily wish to consume, and represented a "problem of plenty". NSS data on falling share of cereals in the spending on food were quoted to argue that not only the well-to-do, but all segments of the population were voluntarily diversifying their diets to high value foods away from cereals. It said that minimum support prices (MSP) to farmers have been "too high" resulting in excessive output and procurement. The RBI's *Annual Report 2001-02* (pp.20-25) repeated this argument, explaining the alleged mismatch between supply and demand as arising from rising administered acquisition price for rice and wheat against the global trend of falling market prices, leading to 'wrong' price signals to the farmers and hence to 'excessive' output and procurement of these crops.

Evidently the authors of these arguments have never heard of the difference between direct consumption of grain and the absorption of grain for all purposes – both direct and indirect – which has been already explained: if they had, they could not have given the above arguments or talked of overproduction, especially given the fact that the very same Reports show massive fall in availability per head. Further, their arguments might have had some little persuasive power if rural growth rates, employment and incomes had been rising. But all the NSS and official data show that precisely the opposite is the case. For a country which has been seeing sharp deceleration of agricultural growth in the nineties, falling per capita foodgrains output and sharply rising rural unemployment, these arguments on voluntary dietary diversification for all rural population segments, are illogical to the point of being foolish. We now know why the central government undertook massive food exports last year in a situation of steeply falling food availability and despite a severe drought: it has all been justified and rationalized already, simply by interpreting deepening hunger and starvation as 'voluntary choice,' and way below-normal consumption as over-production, in a grotesque travesty of reality.

J. Maynard Keynes had once remarked that the world moves on little else but ideas: and the socially irrational outcome we see before our eyes, of increasing hunger amidst relative plenty, illustrates starkly the effects that fallacious theories and wrong policies following from them,

can have in lowering mass welfare. The fallacy involved in the official view is the *fallacy of composition*, where a statement which is correct for a part of the whole, is wrongly inferred to be correct for the whole. With income distribution shifting sharply in their favour, the top one-sixth of the population has certainly been voluntarily diversifying diets, but the poorer majority of the population cannot afford to do so, any more than the hungry poor of Paris crying for bread, could heed Queen Marie Antoinette's advice to eat cake.

It seems that the question of effective demand, and of *demand deflation* is simply not understood by most people. While everyone understands food shortage as in a drought, namely a physical output shortfall which curtails *supply*, it appears to baffle many that even more severe consequences can arise when the *effective demand*, the purchasing power of the masses falls, so that even though the physical supplies of foodgrains are there, people starve or move into hunger, owing to their inability to purchase food or to access food.

The reasons for declining rural mass effective demand in the nineties to date are many, and are all connected with deflationary neo-liberal reforms combined with trade liberalization. They will be summarized only briefly here as they have been discussed at length elsewhere (Patnaik 2003). First, public rural development expenditures which averaged 14.5% of GDP during the period 1985-90, before reforms, were reduced to 8% of GDP by the early nineties as part of the deflationary policies advised by the BWI. Since 1998 they have been reduced further, averaging less than 6% of GDP and in some years falling to less than 5%. In real terms there has been a reduction of about Rs.30,000 crores annually in development expenditures on average during the last five years, compared to the pre-reform period. If we assume a plausible value of between 4 and 5 for the Keynesian multiplier, this means a drop in incomes in agriculture annually to the tune of between Rs.120,000 crores to 150,000 crores - a massive contraction indeed. This order of income fall, combined with real income declines owing to other causes detailed below, is broadly consistent with the observed fall in the contribution of agriculture to GDP during the nineties, from around one third to just over a quarter at present.

Let us remember that rural development expenditures include all employment generation programmes, special areas programmes, village industry, irrigation and flood control, energy and transport, apart from agriculture and rural development. Further, public fixed capital formation in agriculture has also continued its decline even more sharply in

the nineties. It is hardly surprising that the rate of agricultural growth has slowed drastically in the nineties and has fallen below population growth for the first time in thirty years, and that the NSS employment surveys show an alarming collapse of rural employment growth to below 0.6% annually during 1993-4 to 1999-00 compared to 2% annually during 1987-8 to 1993-4.Rural job losses are reflected in a lower participation rate, higher open unemployment, and an absolute decline in the numbers employed in agriculture.

Despite all its recent strident talk of development and the costly media publicity to every project, the reality is that no government has followed more systematically anti-development policies than has the NDA during the last five years. (It must be remembered that a rise in the size of the budget deficit as such, is no indicator of an expansionary impact on material production, if the rise is owing to reduction in the tax-GDP ratio and increasing interest payments to the well-to-do, as has been the case with reform policies). The decline in rural purchasing power has also contributed substantially to industrial recession, through demand linkages for simple consumer goods and manufactured inputs. The economy has undergone de-industrialization with the contribution of industry to GDP, which had been rising in the eighties, falling from 28% to just over 25% in the course of the nineties, and large net job losses have taken place in the organized sector. The only sector which has grown fast is the services sector which has ballooned, at the expense of the material productive sectors. As income distribution has shifted to the urban elites, a modern version of the medieval Mughal economy is emerging with dozens of service providers to each individual rich household. Only a small segment of the services sector is highly-paid IT related services: the major expansion comes from lower-paid service activities.

Second, at the very same time that unemployment was growing and real earnings of the rural masses falling owing to deflationary policies, the government, years before it was required to do so under WTO, bending to the pressure of advanced countries, removed all quantitative restrictions on trade by April 2001 and exposed our farmers to unfair trade, global price volatility and recession-hit external markets. While global primary prices were rising up to 1996, they went into a prolonged decline thereafter, with between 40-50% (cereals, cotton, sugar, jute) to 85 % (some edible oils) fall in unit dollar price between 1995 and 2001. Some goods like tea and coffee continue to fall for growers, and others have seen only 10 to 15 percent rise from the trough, in the last two years. It is one thing to open the economy to trade when mar-

kets are expanding and quite another to do so when the world capitalist economy is in recession.

Anyone with a rudimentary knowledge of the past behaviour of global commodity markets should have been able to predict the crashing prices after the sharp rise of the early nineties, and also predict the fact that advanced countries would immediately raise their subsidies as they have always done (this author had warned of both in a 1997 paper), but India's policy makers have been unequal to the task and have in effect sacrificed our farmers on the altar of the BWI and WTO dogmas. These free trade dogmas ensure reduction of protection to their own producers by gullible developing country governments, at the same time that advanced countries increase their non-tariff barriers and massively raise their subsidies – the greater part of which they have, for their own convenience, already defined as non-trade distorting and placed outside reduction commitments in the Agreement on Agriculture. The bound tariff rates on agricultural products which the Commerce Minister had repeatedly assured as being adequate (bound rates averaged 115%) have not been actually implemented to provide protection to our farmers. On the contrary even under the regime of sharply falling global prices, duties continued to be reduced by the Finance Minister in every budget, far below the bound rates and averaged only 35% by 2000, allowing imports of rice, fruit and dairy products undermining local incomes.

Producers of all export crops in India including raw cotton have also been badly hit by falling global prices, especially as input prices also rose with reform policies, inducing a severe squeeze on their already low incomes. With the implementation of the Narasimhan Committee Report after 1994, bank credit became more expensive and reliance on private high-cost credit perforce rose. Reduction of input subsidies and higher power tariffs, all part of the reforms pushed by the BWI, were mindlessly implemented even as farmers were already in difficulty, plunging virtually all farmers including the normally viable ones, into a downward spiral of indebtedness and causing many to lose land as the latest data indicate. Sale of kidneys and suicides are stark indices of deepening agrarian distress.

While the main prize for servile implementation of deflationary BWI dictates against mass interests, goes to the central government and its policy advisers, the next consolation prize for the most adverse state-level policies should go to the TDP government of Andhra Pradesh which, entering into a direct structural adjustment programme with the world Bank, has hiked power tariff on five occasions. This state has

seen more than three thousand recorded farmer suicides in the last five years as well as suicides of entire families of weavers. In 2002 alone, according to police records (reported in *The Hindu*, Hyderabad edition of Jan.6, 2003) as many as 2,580 deeply indebted farmers killed themselves mainly by ingesting pesticides in three districts alone - Warangal, Karimnagar and Nizamabad. We have no record of suicides on this scale in colonial India: our present day politicians in their servile implementation of imperialist dictates routed through the BWI, have outdone even the colonial masters of the past in their disregard for the welfare of the mass of the people. At least agrarian distress at that time led to some official commissions of inquiry and amendments to laws to restrict land transfer for debt: at present all we see is bad theory and open apologetics.

Advanced countries, as they have always done in the past, have been increasing support to their farmers as global prices fell (the US has legislated subsidies into the future, which will give transfers to its farm sector of $180 billion by 2008 compared to $84 billion in 1998). The majority of our economists by contrast, are busy attacking the Indian farmer when he is already down, by saying that 'MSP is too high' and should be cut for these *kulaks*, and by shedding crocodile tears for the poorer farmers and labourers, on the ground that they are net food purchasers and would benefit from lower prices. They are obsessed with the question of support price alone, not the issue price which is the relevant one, and which can be lowered in principle without affecting support price. Further, by focussing on price alone, they implicitly assume that the population is on the same demand curve as before, whereas in fact the demand curve itself has shifted down so drastically for the mass of the rural population that tinkering with the support price is now likely to deepen the crisis.

They seem not to realize that unemployment and income deflation has swamped this sector, that every price is also an income, and cutting MSP today when there is already agrarian crisis, would further widen and deepen income deflation and lead to more indebtedness and more suicides. They forget that for years and decades India's surplus farmers, the much reviled 'kulaks', sold grain without complaining to the FCI at half the global price when global price was high, thus ensuring cheap food for urban areas. Now, when the global price has fallen below the local price, these farmers have a moral right not to be abandoned to unfair competition from heavily subsidized foreign grain and other products, and a right to be given enough price support to prevent their total ruin. If those misguided economists who put forward unethical argu-

ments about lowering MSP, were seriously interested in the cause of the poorer farmers and labourers they should be demanding an expansionary fiscal stance, a large hike in public investment and in rural development expenditures to restore employment and purchasing power.

Thirdly, the introduction of PDS targeting in 1997 divided the population into 'above poverty line' (APL) and 'below poverty line' (BPL) with lower prices being payable by the latter but with a cut in quantity. The problem of wrong exclusion of large numbers of the actually poor from BPL status (which is determined by arbitrary criteria) has been a serious one and the denial of ration cards has further aided the fall in sales from the PDS already taking place owing to decline in purchasing power. Hardly 10 million tonnes were sold by 2000-01, compared to 21 million tonnes in 1991 despite the population needing ration grains, being much larger (Swaminathan 2002).

While real disposable incomes for the top segments of the urban population have been rising fast owing to reform policies of tax cuts and cheapening of primary goods and durable goods, on the contrary rural mass incomes in terms of command over goods have been falling faster than is evident from consumption data, since higher indebtedness and asset losses have taken place to maintain already low consumption. There is rising absorption of foodgrains for the elites with a higher proportion going to processed foods and animal products, while the majority in rural areas are plunged into deepening undernutrition, owing to their reduced purchasing power and reduced institutional access to food. Very recent analysis of NSS data by fractile groups has confirmed my earlier diagnosis of sharply widening inequalities in the last five years.

The five-year period of NDA rule has seen the most violent increase in rural-urban income inequalities ever seen since Independence. The urban elites have every reason to feel good as they play with their new toys in the form of the latest automobiles and consumer durables, enjoy a more diversified diet, eat out more and reduce their resulting adipose tissue in slimming clinics: but the same neo-liberal policies which have benefited them have immiserized millions of their fellow country men, women and children who are getting enmeshed in debt and land loss, and struggling harder merely to survive.

**The Imbroglio of Indirect Poverty Estimates**

The NSS Rounds on consumption expenditure collect data not only on the expenditure on food and non-food items but also the physical quantities of foods, and since the average calorie equivalent of different foods

is known it also computes and presents the calorie equivalent of average diets by expenditure groups. When we directly inspect these available NSS data on the calorie intake corresponding to the quantities of foods consumed by persons in the various per capita expenditure groups, we see that by 1999-2000, seven-tenths of the rural population was below the norm of 2400 calories per day (the norm originally adopted in all poverty studies), about one-tenth had an intake around the norm and only one-fifth had an intake above the norm. (See Table 5). *Thus at least seven-tenths of the rural population was in poverty in 1999-2000.* About two-fifths of the urban population was below the lower urban norm of 2100 calories. This method is direct, simple and transparent, and requires no estimation by the reader. Even if a much lower level of 2100 calories, equal to the urban norm, is considered for rural areas, we see by direct inspection that over half the rural population was below this level.

Even though the official and academic estimates of poverty started by using exactly the same poverty norm of 2400 calories for rural areas, they now arrive at an estimate of population in poverty which is 27 % or less for the same year, 1999-2000, and this, as we can see from Table 5, corresponds to a calorie intake of less than 1900 per diem. The very low estimate from the Planning Commission and the academics today, is because they all now use an indirect and non-transparent method of estimation, which moreover has proved to be increasingly incapable of capturing the ground reality of larger numbers of people moving into under-nutrition. This indirect method requires some explanation for the lay reader.

The direct inspection of calorie equivalent of quantities consumed by different expenditure classes was carried out by the Planning Commission using the 28th Round of the NSS for 1973-74, a date which is now thirty years in the past. From this, the per capita monthly expenditure whose food expenditure part, gave 2400 calories per diem in rural areas and 2100 in urban areas at that time, was obtained and this was called the poverty level income (though more correctly it is the poverty level expenditure. It came to Rs.49.1 for rural and Rs. 56.6 for urban areas).

For later years no similar direct inspection of the calorie equivalent of changing expenditures was done, even though the relevant NSS data were there for many years, exactly in the same form as for the year 1999-2000 given in Table 5. *Instead, in order to estimate poverty for later years, it was assumed that the quantities people consumed, hence the pattern of consumer expenditure, remained unchanged from 1973-74,*

and a price index was applied to the old poverty line to update it. The new rounds of consumer expenditure data, entered the picture not for directly revising the poverty line, but only to the extent that they were used to read off what percentage of persons came below the new poverty level, estimated indirectly by applying a price index to the old poverty level. Thus the method used amounts to a Laspeyres index, with quantities in a base year which by now is three decades in the past, and with adjustment being done only for price change.

If the Planning Commission, when it first estimated the poverty line expenditure for 1973-74, had said that it would base its estimate on quantities of foods people consumed thirty years earlier in 1943-44, obviously no-one would have taken its estimate seriously. Present day Planning Commission and academic estimates are based precisely on a three decade old consumption pattern relating to 1973-4, and they no longer deserve to be taken seriously. In fact they are no longer worth the paper on which they are written.

There had been no dearth of earlier, detailed criticisms of the indirect method, starting from the valid argument that it makes no sense to assume an unchanged consumption pattern for it has changed considerably over time and not necessarily owing to voluntary reasons: labourers are no longer paid wages as grain and meals (not fully valued earlier), and now have to purchase food against money wages; common property resources giving free goods have disappeared so that fuel and fodder have to be purchased, all impacting on the quantities of food that can be purchased by the poor out of a given income (Suryanarayana 1996). As a result, a considerably larger total expenditure is actually required than before, so that its food component can satisfy the calorie norm. The price-adjusted poverty line is therefore found to correspond to an actual calorie intake which over time, is further and further below the original calorie norm (thus the 1999-2000 indirectly estimated official poverty line of Rs.328 per month corresponds to less than 1900 calories per diem as inspecting Table 5 shows. The direct estimate gives a poverty line of Rs.567, over 60% higher than the official one).

The increasing divergence between the direct and indirect estimates have been pointed out by many scholars, as have the anomalies and arbitrariness in the indirect estimation method. An early demonstration of the divergence of the results using both the direct and the indirect method for two different years in the 1970s compared to a base year in 1961-2, had been carried out by Rohini.Nayyar (1991) who had explicitly concluded that "there is no doubt that the poverty estimates based

on actual consumption data and set out in Table 3.4 are superior to those derived from a price-adjusted poverty line, particularly as the use of a deflator [price -index] poses many problems..." (Nayyar 1991, 38). She also pointed out that the two methods gave results which while different (the difference was 19% of population in 1977-8) did move in the same direction over time: but this conclusion no longer holds in the late nineties, for reasons discussed later.

Mehta and Venkatraman (2000) gave the 1993-94 NSS consumption expenditure groups and calorie levels, which showed that 69.7% were below the group with an average of 2410 calories. Thus this direct estimate for rural areas included an additional 32.5 % of the rural population excluded by the official indirect estimate of poverty (which was 37.2%), a difference far too large to be ignored. They rightly questioned the logic of continuing with the indirect method.

All these criticisms have been completely ignored by the official and academic poverty estimators who use the indirect method, and who have continued full sail on their unregenerate course: they are rapidly discrediting the entire area of indirect-estimation poverty studies for their unreal estimates are foundering on the rocks of hard macroeconomic facts which contradict their estimates and which cannot be wished away. The fallacious official views on voluntary reduction in foodgrains absorption, and resulting official apathy and callousness towards the reality of increasing hunger, have been reinforced by the wrong official estimates showing an actual reduction of the rural population in poverty to 27% by 1999-2000 in the face of the opposite ground reality of increasing hunger.

A number of academics (A. Deaton, K.Sundaram and S. D.Tendulkar, S. Bhalla and others).have published the papers estimating poverty for 1999-2000 by the indirect method, which they had presented at a conference (see *Economic and Political Weekly* January 25-31, 2003). There is scope for variation in results among them as different price indices can be used. The estimate by A. Deaton using new price indices places the rural poverty percentage in India at 25% , even lower than the official 27% (Deaton 2003b). Other estimates are either of a similar order to the official one or are even lower.

Another way of characterizing all the estimates using the indirect method, would be : "Statistical poverty reduction via clandestine reduction of the calorie norm". The official Planning Commission (Rs. 328) and Deaton, b (Rs.303) price-index updated poverty line for monthly

per capita expenditure for 1999-2000, gives a daily calorie intake which is 1868 or less, as inspection of our Table 5 shows – a far cry indeed from the original 2400 calorie intake norm in the base-year. *To meet the 2400 calorie norm, Table 5 show that a person needed to spend at least Rs. 567 per month or Rs. 19 daily, equivalent to US 44 cents at the then exchange rate of Rs. 43.33 to a dollar. This is the realistic poverty line, not the official one of Rs. 328.*

The Planning Commission is asking us to believe that people could survive on a mere Rs. 11, or U.S. cents 25 daily while Deaton's estimate means that Rs. 10 daily or US cents 23 is considered quite enough! This is less than a quarter of the World Bank's own rough and ready dollar-a-day measure. At this rate poverty can be statistically eliminated completely from India by the indirect method with just a little more effort by the estimators to get a lower rise in the price index giving, say Rs. 240 per month rather than Rs. 303 (Deaton b) as the 1999-2000 poverty line. This, from Table 5, would reduce the poverty percentage dramatically to only 5, and as these people too would soon be dead, there would be a 'final solution' to all indirect estimation problems.

It is to be noted that none of the quoted papers making the low, indirect poverty estimates and published in *EPW* ( Jan. 21-25, 2003), tells the reader that the implication of their method is that the calorie standard is thereby being drastically diluted and the original concept of poverty based on nutritional norm, itself is being altered. To present estimates which imply a 500 calorie per diem or more cut in the calorie intake without explicitly informing the reader about it, is not acceptable by any academic standard. The NSS data for 1999-2000 relating *actual calorie intake* to expenditure groups (which we have put together in Table 5) is not presented by any of those making indirect estimates even though to do so they are using the percentage of persons by expenditure groups from the same source. None of these papers refer to even a single author among the several quoted earlier, who have criticized the indirect estimation method that they use. The student or newcomer to the area who reads the papers by the indirect method users, is not made aware that any other, direct estimation method using the latest NSS consumption data, even exists and is instead given the impression that the indirect method is the only one by which poverty can be estimated, which is untrue.[4]

Quite apart from the problem of a far distant base year, the indirect method of updating an old poverty level using price indices now no longer captures even the trend of change correctly, leave alone actual

numbers, *because the method can only reflect increase in poverty arising from rise in prices, and cannot capture increase in poverty arising from unemployment and income loss.*[5] This fact is proving to be the final nemesis of the prevalent poverty studies, for in the second half of the nineties and especially from 1998, as we have seen, *worsening welfare in rural areas has been caused not by inflation, but owing to deflation and unemployment.* So pervasive has mass income deflation become that, significantly, a very bad drought year has seen a historically low inflation rate.

It is to be expected therefore, that the indirect poverty studies should show, as they do, exactly the opposite trend compared to the actual ground reality worsening welfare owing to a higher percentage of persons moving below the calorie norm, hence rise in poverty. (The situation now is even worse than direct inspection of Table 5 indicates because foodgrains absorption per diem has fallen further by 25 gms by 2003 entailing a loss of another 95 calories per diem on this account).

The bizarre element in all this arises from the loud celebrations of allegedly declining poverty by the government and by a number of academics engaged in indirect estimation, whereas the 'decline' is solely owing to the gross defects and the inappropriateness of their own indirect statistical methods. All the adverse macroeconomic trends official data reveal regarding rising unemployment and falling food absorption, which are completely inconsistent with any story of declining rural poverty, are never alluded to by the practitioners of the indirect method nor, as already noted, are the available NSS direct consumption data with calorie equivalents, presented by them in their papers.

The poverty estimators using the indirect method are doing a grave disservice to the Indian people by continuing with an indefensible methodology which by now is giving the opposite result to the actual trends

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[4] The only paper in the *EPW Jan 21-25, 2003* collection which discusses calorie deprivation (Meenakshi and Vishwanathan) does so as though it is unrelated to poverty estimation. The paper does not connect the data on actual calorie deprivation, to the calorie intake levels implied by the indirect estimates presented in the same issue, nor does it discuss the crucial matter of the increasingly large difference between the head count percentage of population in poverty obtained by the direct and indirect methods.

[5] The process of employment and income loss are likely not to be not reflected fully in immediate fall in consumption but also involve in rising indebtedness and asset transfer.

on the ground with respect to hunger. While in the late 1970s the difference between the direct and indirect methods was about 19% of the rural population and in 1993 the difference was 32% , for 1999-2000 the difference between the direct method (70% in poverty) and the indirect method (27 % according to Planning Commission) is 43% of the rural population.

Whether they wish to or not, the officials and academics using the indirect method and claiming a reduction in poverty in the 1990s, are contributing to the formulation of incorrect policies further lowering mass welfare. If these poverty estimates remained in the ivory towers of academia and of Yojana Bhavan, it would not matter: but now targeted food distribution is being directly linked to poverty estimates. The present Government is currently slashing the numbers of people designated as being 'below poverty line', and grain allocations at a low price to the states are correspondingly sought to be lowered, on the ground that poverty has declined. The failure of the prevailing indirect estimates today thus does not lie in the failure to capture ground reality alone: they have become positively dangerous in spreading wrong information and inducing the opposite policy measures to those required. It is high time that the academics and administrators working in the area of poverty estimation used the direct indicators provided by the NSS consumption data and by per head foodgrains availability, if they are at all concerned about real trends as regards hunger.

In the middle of the Great Depression in 1931 with one-fifth of workers unemployed and factories closed, many economists in advanced countries maintained that economics was about the allocation of 'scarce resources' among competing uses, and that sound finance meant that governments should cut expenditures. They are remembered today for their remarkable conceptual blindness, but considerable additional damage was done at that time since they dominated public policy. Today in India in the middle of rising rural unemployment, falling per head grain intake and a rise in the absolute and relative numbers in nutritional deficit, we find that those who make policy are talking of declining rural poverty on the basis of unreasonable estimation procedures and by ignoring all other trends. Posterity will remember them too for their remarkable conceptual blindness, but for the present the prognosis is bleak. Where the diagnosis of the problem of hunger itself is incorrect and a worsening situation is being interpreted as betterment, no remedial measures can be expected of the policy advisers and the rulers, of this country which was once a developing economy, but which has been turned into the Republic of Hunger.

**Table 5**
**The Population in Poverty from direct observation of Calorie Intake, against expenditure group and distribution of persons, 1999-2000, NSSO**

| **RURAL** Monthly per capita Expenditure Rs. | Calorie Intake per diem | Per cent of Persons % | **URBAN** Monthly per capita Expenditure Rs. | Calorie Intake per diem | Per cent of Persons % |
|---|---|---|---|---|---|
| Below 225 | 1383 | 5.1 | Below 300 | 1398 | 5.0 |
| 225- 255 | 1609 | 5.0 | 300- 350 | 1654 | 5.1 |
| 255- 300 | 1733 | 10.1 | 350- 425 | 1729 | 9.6 |
| 300- 340 | 1868 | 10.0 | 425- 500 | 1912 | 10.1 |
| 340- 380 | 1957 | 10.3 | 500- 575 | 1968 | 9.9 |
| 380- 420 | 2054 | 9.7 | 575- 665 | 2091 | 10.0 |
| 420- 470 | 2173 | 10.2 | 665- 775 | 2187 | 10.1 |
| 470- 525 | 2289 | 9.3 | 775- 915 | 2297 | 10.0 |
| 525- 615 | 2403 | 10.3 | 915- 1120 | 2467 | 10.0 |
| 615- 775 | 2581 | 9.9 | 1120-1500 | 2536 | 10.1 |
| 775- 900 | 2735 | 5.0 | 1500- 1925 | 2736 | 5.0 |
| 900 & more | 3178 | 5.0 | 1925 & more | 2938 | 5.0 |
| ALL | 2149 | 99.9 | ALL | 2156 | 99.9 |
| *Summary* | | | | | |
| 470- 525 and less | 2289 and less | 69.7 | 500- 575 and less | 1968 and less | 39.7 |
| 525- 615 | 2403 | 10.3 | 575- 665 | 2091 | 10.0 |
| 615-775 | 2581 | 19.9 | 665- 775 | 2187 | 50.2 |

*Source: NSSO (1999-2000) Report No. 471, Nutritional Intake in India and Report No. 454, Household Consumer Expenditure in India – Key Results.*

Note: The monthly per capita expenditure, refers to the expenditure on both food and non-food, with the food expenditure part, giving the calories indicated against each group. For the three groups in the summary, the per capita monthly expenditure was Rs.496.7 and less, Rs.566.62, and Rs.686.0 and more. (The average expenditure is close to but not exactly the mid-point of the relevant expenditure group owing to inequality within each group). The actual poverty-level expenditure, which commanded food quantities giving 2403 calories per day (almost equal to the 2400 calories norm), in 1999-2000 was Rs.566.6 per month (Rs.19 per day) in rural areas and 69.7 percent of all persons con-

sumed below this level. In urban areas about 40% of all persons consumed below the urban calorie norm of 2100, closely approximated by the actual calorie intake 2091 of the expenditure group Rs. 575 to 665. For comparison, the official 'poverty level' expenditure (estimated by inflating an old poverty line by a price index) was only Rs.328 per month (Rs.11 per day) for rural areas at the same date, giving 27 % in poverty while Deaton 2003b estimated 25% in poverty taking Rs. 303 per month (Rs 10 per day) as the poverty line. The associated calorie intake is thereby lowered by both, to less than 1868 calories, far below the nutrition norm (since, from the above table, the Rs. 300-340 monthly expenditure group gave only 1868 per diem average intake).

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## References


BANISTER, J., 1987, *China's Changing Population*. Stanford University Press

COALE, A. J., 1984, *Rapid Population Change in China*, 1952-1982 (National Academy Press, Washington, D.C.)

DEATON, A. 2003, a ) "Adjusted poverty estimates for 1999-2000" b) "Prices and Poverty 1987-2000". Both papers in *Economic and Political Weekly* Vol.38, January 25-31.

MEHTA, J., and VENKATARAMAN, 2000 "Poverty Statistics – Bermicide's Feast" *Economic and Political Weekly*, Vol.35, July 1.

NAI-RUENN CHEN, 1966 *Chinese Economic Statistics – A Handbook for Mainland China* (Edinburgh University Press).

NAYYAR, R., 1991, *Rural Poverty in India* (Oxford University Press).

PATNAIK, U., 1991, "Food Availability and Famine – A longer View" *Journal of Peasant Studies*. Vol. 19 No. 1, October. Reprinted in U. Patnaik. *The Long Transition – Essays on Political Economy* (Tulika, 1999)

_____, 1996, "Export oriented Agriculture and Food Security in Developing countries and in India". *Economic and Political Weekly*, No. 35 to 37, September. Reprinted in *The Long Transition – Essays on Political Economy* (Tulika, 1999)

_____, 2002 "On Famine and measuring Famine Deaths" in S. Patel, J. Bagchi and Krishnaraj (Eds). *Thinking Social Science in India – Essays in Honour of Alice Thorner* (Sage)

_____, 2003 "Food Stocks and Hunger – Causes of Agrarian Distress" *Social Scientist* Vol.31 Nos.7-8 July-August.

SEN, A.K., 1999, *Development as Freedom* New York: A Knopf.

SURYANARAYANA, M. H., 1996, "Poverty Estimates and Indicators: Importance of Data Base" *Economic and Political Weekly*, No. 35 to 37, September.

SWAMINATHAN, M., 2002 "Excluding the Needy - the Public Provisioning of Food in India" *Social Scientist* Vol.30 Nos. 3-4, March-April .

# THE POLITICS OF HUNGER, THE PRIVATISATION OF FOOD AND THE PDS

— COLIN GONSALVES

When we lodged the right to food petition – PUCL vs. UOI (Writ Petition (Civil) No. 196 of 2001) – we knew very little of the complex issue of food security. We did not expect to get very far with the petition. I remember cautioning Kavita not to tell anyone about the case because the chances were high of the Supreme Court rejecting the petition. I had at the back of my mind the 1989 experience of Kishan Pattnaik whose petition was disposed off on the empty assurance of the State of Orissa that steps would be taken to prevent starvation deaths. Of course, nothing was done. So ten years later, when the NHRC began once again to look into starvation deaths in Orissa and the matter languished there, it seemed as if history was repeating itself.

What we didn't factor into our calculation was Justice B. N. Kirpal who unexpectedly took up the case with gusto. He would brush aside the usual bureaucratic hurdles, overrule petty objections and come straight to the point. The Court's four initial orders lifted our morale and spurred a national campaign on the right to food that was subterranean and waiting for something to set off a chain reaction. It must be recognized and stated that the struggle on the right to food predates our case by many years and is very extensive. Groups all over the country have worked on food security in a variety of ways.

Food is a volatile issue. It transcends hunger and involves not only large corporations but also nations and – the bottom line – profits. Malnutrition and starvation deaths are only playthings. In this quagmire are all kinds of players: from the NGOs and struggle organizations with their immediate concerns on the one hand, and the big and silent players manipulating things behind the scene. The confusing thing is that all the players harp on hunger. The starting point of both the peoples and the multi-national corporations (MNCs) agenda is malnutrition. The jargon of poverty is so well used by all, how do you find out who your enemy is?

The difficulties faced by the people's organization is that they are fragmented, fighting against insurmountable odds and financially impoverished. While they struggle for reform at the local level, the big picture is often difficult to see. On the other extreme of the spectrum are powerful lobbies, contemptuous of the poor and sensing in hunger the opportunity to do business. These lobbies operate silently but they control government.

Not only we in the support group of the campaign but groups everywhere have asked government why it is, when there is so much surplus grain, that grain is not released free for the starving sections or for food-for-work. No answer. Perhaps we were barking up the wrong tree for globalisation and structural adjustments demands that the food subsidy be cut. Extending the subsidy is out of the question. These are the larger forces – the WTO, the World Bank and the IMF – with their numerous servile collaborators in government who decide not only the answer but also what questions can be asked.

It is all right to speak of malnutrition – that's stating the obvious. It is all right to speak of 'vulnerable sections' because that, in fact, strengthens their argument that subsidized food should go only to the poorest of the poor - as if hunger is a localized phenomenon. Such a preoccupation with 'vulnerable sections' operates as some kind of super-targeting and works in favour of a much smaller commitment of grain and money. It is all right to speak of corruption in the public distribution system, because that fact is twisted to support the argument that PDS should be discontinued. If it is doing so poorly why not let it die a natural death? It's all right to talk of new schemes. People in government know that these schemes will never be implemented and are content to have others waste precious time elaborately designing fanciful new schemes.

The power play and deception is impressive. A massive public distribution system through which 40 million tones of grain flow every year is slowly strangled while the government dangles a bait of 2 million tones for destitutes and vulnerable sections. We, in the struggle for food security, welcome any improvement of any scheme, but we are not content.

The commitment to globalisation, the enslavement to the MNCs and the resistance to welfare is so entrenched, even Supreme Court orders cannot change that. Despite the orders of the Court we found on reviewing the situation after one year that the off-take of food grain for welfare schemes went up by a paltry 5 mt. During the same period exports at slightly above the BPL rates (to avoid any criticism from Parliament) was over 5 mt. Not a single state had fully implemented the mid-day meals order despite the deadline passing. Ration shops remained closed despite specific orders and large scale diversion of grain continued unabated. Government persisted with the slow strangulation of the PDS despite the legal proceedings. It was like Jack - the - Ripper being distracted by a fly.

Then came the report of the "High Level Committee on Long Term Grain Policy". It marks an alarming shift at the highest level of government, away from the Public Distribution System (PDS) and towards the privatization of food. The damage that will occur to the most needy in our country, as the PDS is sabotaged, simply must now be considered.

**Sabotaging the PDS: The High Level Committee goes dangerously astray**

Built up painstakingly over the last 3 decades is an incredible structure for the maintenance of national food security. It rests on three pillars a) a reasonable price paid to farmers so that production levels of cereals are kept up; (b) The FCI systems for large scale and efficient procurement, storage and transportation of grain and (c) a public distribution system (PDS) for the transfer of subsidised grain to the poor.

The IMF now says stop this subsidy. The High Level Committee falls in line. The committee recommends:

- Cutting the price paid to the farmers thus discouraging procurement and the cultivation of cereals

- Cutting the food subsidy almost entirely by raising the PDS grain prices to almost market prices: thus effectively dismantling the PDS.

- Imports of cereals.

Of course lip service is paid to Food for Work (one page of the 200 page report) and Antyayodhya Anna Yojana (1/2 page). And yes, self-sufficiency!

Operating on two presumptions, both wrong, the High Level Committee on Long Term Grain Policy has made recommendations which appear in favour of the poor in the short term but which are against them in the long run. The first presumption is that the surplus stocks in the FCI godowns are an indicator of excess procurement. The second is that the food subsidy standing at 1% GDP must be reduced to 0.2%. Accordingly, it recommends that procurement be discouraged by cutting minimum support price to farmers thereby reducing procurement by 12 million tonnes. Then it suggests that there be a uniform PDS price virtually at acquisition cost, thus allowing the BPL prices to shoot upwards. The poor indeed have reason to be very alarmed.

Ironically these suggestions have been made at a time when reports of deaths by starvation have come in from Orissa, Jharkhand and Uttar Pradesh and elsewhere. Today there are 60 MT of grain in the godowns well above the 15 MT buffer.

**Food for Work**

Procurement every year is 40 MT. Offtake (*excluding food for work*) is 30 MT. Assuming that the food for work (FFN) programme will remain at their present low levels, the Committee concludes that procurement must be reduced. This is a fatal error.

Food for work programmes during British rule were governed by the Famine Codes. These provided an extensive code of conduct for officials for the recognition of the onset of famines, the immediate starting of FFW programmes available to all irrespective of income, and the payment of subsistence amounts to those who cannot work. Studies show that the British were able to control deaths by starvation by the effective implementation of these Codes. Governments today, in contrast, appear to be worse than the British. Food for work programmes began only after crops were decimated, cattle migrated and starvation deaths had occurred. Moreover, the FFW programmes had ceilings leaving out large sections of the population.

Over time these Codes came to be disregarded. As is usual in every Red Fort address to the nation, Prime Ministers began to announce schemes. The Employment Assurance Scheme (EAS) promised 100 day of FFW to all. Prime Minister Vajpayee then announced a new Sampoorna Gramin Rozgar Yojana (SGRY). Everyone assumed it was an improvement on EAS. With the facts came the shock. It would provide on average of 10 days employment! Rs. 5000 crores and 5MT grain was all government could spare.

Chandrababu Naidu demonstrated that 5MT was a pitiable amount for the country when he managed to grab 3MT for Andhra alone. A genuine FFW implemented nation wide can easily absorb 30 MT. Thus, procurement is not 10 MT in excess but about 20 MT less than required. The piling up of stocks is therefore not because procurement is too high but because there is a deliberate decision not to feed the poor. This brings us to the subsidy issue.

**Subsidy**

To argue that the subsidy should be reduced is to say that food security for the poor through the PDS should be done away with. Subsidies were

reduced in two ways; first by targeting and second by the introduction of food stamps.

The High Level Committee concludes, what everyone has known for a decade that the shift from universal to targeted PDS was a mistake. Targeting restricts the PDS benefits to persons below a particular income level. Targeted Public Distribution System (TPDS ), has "excluded a considerable part of the poor and undernourished population". The classification into BPL and APL was "seriously flawed".

If the international standard for the definition of the poor i.e. a household that spends more than one third of its income on food, is followed in India, 95% of all households would be considered poor. If the Chinese standard of a food share of 60% is followed, then 70% of all households would be considered poor. However, only 27% are considered as falling within BPL. This is why angry complaints are coming in from all over the country about the wrongful exclusion of the poor from the BPL list. Tribals who say they eat meat or drink liquor are out. Tiles on the roof or a fan in the room knock the family out of the list. The Planning Commission's definition of BPL as a family income less than of Rs. 20,000 p.a. is rarely followed.

But was targeting a mere mistake or was it a deliberate attempt to sabotage the PDS? And is the Committee using the failure of TPDS to dismantle the PDS system altogether in the guise of reforming it?

PDS was sabotaged in five ways. First by targeting, then by increasing the APL and BPL prices to such an extent that APL offtake collapsed and BPL offtake declined. Thirdly by relaxing Fair Average Quality Norms so that people were disgusted with the grain they received, then fourthly by rendering uneconomical the running of ration shops save by the black marketeering in grain, and finally, when the APL prices were marginally reduced, by not communicating this to the public.

When targeting was introduced in India in 1997 the experiences of Mexico, Zambia, Jamaica, Tunisia and Sri Lanka were well known. The targeted food stamps in Mexico were aimed at cutting the food subsidy and led to an 80% decline of those receiving subsidized food. Sri Lanka's effective universal PDS was converted to one based on income in order to pander to the IMF direction to cut food subsidies. As a result there was a 50% fall in participating households and a significant number of low income groups were excluded from the food stamps program. Food stamps replaced general price subsidies in Jamaica to

reduce the subsidy from 1% GNP to 0.23%. The real value of the food stamps fell until the cost of the minimum food basket was 3 times the minimum wage. The poor were excluded. Similarly in Tunisia there was a dramatic fall in the calorie and protein intake after subsidies came under attack. And in Columbia targeting was the method by which food subsidies were done away with.

The heart of the matter is money. India's food subsidy at 1% GDP is not high by International standards. Moreover 66% of this is worthless as it is storage cost. The hidden agenda of the committee is to reduce this food subsidy to 0.2% i.e. to virtually do away with the subsidy for the poor. To disguise this with an offer of price indexed linked coupons for the poor and cash transfers to the state in lieu of price subsidies is laughable. State governments that cannot pay the salary of their employees will put this cash into the general account. Coupons have failed worldwide. In India counterfeiting will be an additional problem.

With the largest population of malnourished people in the world and with half the nation's women and children malnourished, 'business as usual' will not do. Drastic steps are called for. India must consciously dedicate a part of its GDP towards subsidising food for the poor. The subsidy must go up not down. In the present extreme situation 2% GDP is not excessive. Jamaica in the 1970's and Tunisia in the 80's had these subsidy levels.

Once the decision is taken for a massive FFW programme the gap between procurement and disbursement will disappear, the minimum support prices must be maintained to keep up the level of procurement and benefit farmers, and the movement of grains from the godowns will reduce that part of the food subsidy relating to storage (which is 66% of the total food subsidy). A massive FFW programme will reduce hunger, provide employment and improve rural infrastructure.

As the grain component of SGRY rises from 5 MT to 30 MT, so too will the cash component. But this can be kept in check by enforcing the labour/ capital ratio on public works to 70/ 30 and by paying almost the entire wage in grain. Additional funds could be raised by the states by the imposition of a levy as Maharashtra has done in the case of the Employment Guarantee Act. All it needs is the will to act.

**PDS Prices**

In recommending that BPL and APL prices be increased close to acquisition cost (which is today higher than the APL level) the Committee

goes over the top. Surely it must understand that the current BPL/ APL rates are too high for the poor to purchase grain.

Distribution is very low not because PDS is inherently unworkable, but because the poor are too poor to buy the grain at the prices fixed. The BPL rate has to be fixed at the Antyayodya rate level, and the APL rate brought down to the BPL level for there to be any significant increase in offtake. Starvation does not just happen. It is caused by high PDS prices.

**Contractors**

Seeking to capitalise on the huge surpluses lying in FCI godowns, Reliance and others have moved in. Privatising storage is the catch phrase. Once it is understood that the grain should be distributed and not stored for years, then the FCI capacity ought to be sufficient. There is no need for contractors. Initial calculations show that it should be cheaper to give the grain away free rather than pay contractors!

Food rots in the FCI godowns not because the FCI is inefficient. FCI operations have in fact been efficient given the sheer scale of the operations but its hands are tied and it has no say in the release of grain for the poor. FCI has been critical in sustaining production incentives over thirty years and in maintaining overall national food security.

**Self Sufficiency**

A salient feature of India's cereal situation is that most states are deficit. Growth rates of cereals have decelerated. Non-food grain yields have also declined. Interstate imbalances are expected to widen.

Critical in sustaining the production of cereals is the system of procurement now in vogue and the fair prices fixed for procurement. This has maintained overall national food security for 30 years.

It is essential to maintain cereal self-sufficiency because the devious policies of rich countries and the highly volatile nature of International cereal prices makes the import of cereals a very dangerous policy. Surplus production of a few advanced countries accounts for 4/5 of the global trade in cereals. The US farm subsidy is expected to be about 50 billion dollars a year. Once the US grain exporters get a monopoly on the basis of highly subsidized grain exports, prices will be pushed up leading to a grave crisis.

India has the world's largest malnourished population. Malnutrition among children is higher than sub-Saharan Africa. Since cereals ac-

counts for 60% of nutrient intake, decline in production is a serious concern.

I have heard Amartya Sen say on TV that procurement should be curtailed, market forces be allowed to prevail and then prices will fall and the poor will get food cheap. Quite the contrary. Prices may fall initially. Farmers will then move away from cereal productions. Shortages will occur. Imports of highly subsidised wheat from the U.S. and elsewhere will cause a further collapse of cereal production in India. Prices will then be pushed up by grain exporting cartels leading to chaos and deprivation.

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The time has come now for the Right to Food Campaign to put in place the larger picture through collective discussion: to think globally while acting locally. To study the "reforms" done in other countries and its effect on the poor and thereby understand that the struggle in India has many parallels. The campaign needs to link up with other groups in other countries fighting for food security. All this must be done in a transparent manner by involving all those in the campaign. For those not yet involved in the campaign, now would be a most opportune moment to become a part of it. There can be no more fundamental right for all people than the right to food. And in India, *now*, it is being sabotaged and compromised before it has even been fulfilled.

## List of Principal Acronyms

| | |
|---|---|
| AAY | Antyodaya Anna Yojana |
| APL | Above Poverty Line |
| BPL | Below Poverty Line |
| EAS | Employment Assurance Scheme |
| FCI | Food Corporation of India |
| ICDS | Integrated Child Development Scheme |
| IMF | International Monetary Fund |
| JPEGY | Jay Prakash Narayan Employment Guarantee Yojana |
| MDMS | Mid-Day Meal Scheme |
| MHUs | Mobile Health Units |
| NFBS | National Family Benefit Scheme |
| NHRC | National Human Rights Commission |
| NMBS | National Maternity Benefit Scheme |
| NOAPS | National Old Age Pension Scheme |
| NSAP | National Social Assistance Programme |
| PDS | Public Distribution System |
| RLTAP | Revised Long Term Action Plan |
| RWSS | Rural Water Supply and Sanitation |
| SEMS | Self-Employed Mechanic Scheme |
| SC/ST | Scheduled Caste/Scheduled Tribe |
| SGRY | Sampurna Gramin Rozgar Yojana |
| TPDS | Targeted Public Distribution Scheme |
| UOI | Union Of India |

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